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Supreme Court, U.S.
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No. 93-

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1993

MARJORIE H. ECKARD
Petitioner,

V.

WILLIAM E. ECKARD
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a proceeding involving real property situated in a State other than the State of the proceeding, do considerations bearing upon the Full Faith and Credit Clause *require* courts of the State where the property is located to recognize orders of the forum State court concerning disposition of that property, mandating this Court to revisit its 1909 opinion in *Fall v. Eastin*?

2. If courts of the State where the property is located do not give full faith and credit to orders of the forum State court concerning the property, should the forum State court employ general equitable powers over a party to the proceeding before it, in an attempt to enforce its own orders?

PARTIES TO THE PROCEEDING

The parties to this proceeding are those named in the caption of this case:

Marjorie Eckard, Petitioner, and

William E. Eckard, Respondent.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Marjorie H. Eckard, Petitioner, by her attorneys and under appropriate Rules of this Court, requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeals of Maryland.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported at 333 Md. 531, 636 A.2d 455 (1994), and is set forth in the Appendix to this Petition beginning at p. 53a. The Court of Appeals undertook the appeal prior to a decision by the Court of Special Appeals. The contempt order by the Circuit Court for Montgomery County of October 30, 1992, which was the subject

of the appeal, is reproduced in the Appendix beginning at p. 39a (i.e., relevant portions of the transcript of the hearing of that date during which the Circuit Court's order was issued).

The Order of the Circuit Court of October 26, 1992 requiring Petitioner Marjorie Eckard to sign a power of attorney for conveyance of certain parcels of property in Florida or face contempt of Court, is reproduced in the Appendix beginning at p. 17a (i.e., relevant portions of the transcript of the hearing on that date in which the Circuit Court's order was issued).

The Order of the Circuit Court of Lee County, Florida of February 14, 1991, denying recognition to Maryland Court orders concerning Florida property, is reproduced in the Appendix at pp. 16a.

As to two prior appeals in this matter, the order of the Court of Special Appeals of August 10, 1989 dismissing an initial appeal by Petitioner is reproduced in the Appendix at p. 6a. A motion for reconsideration of this dismissal was denied on September 13, 1989. The parties were so informed by letter from the Clerk of September 14, 1989, reproduced in the Appendix at p. 7a. The Opinion of the Court of Special Appeals of June 13, 1990 in a later appeal by Petitioner is not reported, but is reproduced in its entirely beginning at Appendix p. 10a.

The Decree of Divorce issued on June 21, 1985 by the Circuit Court for Montgomery County is reproduced at Appendix p. 2a. Two relevant Orders of the Circuit Court dated December 12, 1988 and July 31, 1989, are reproduced in the Appendix at pp. 4a and 8a, respectively.

GROUNDS FOR JURISDICTION

The Court of Appeals of Maryland issued its opinion on January 18, 1994. Petitioner's motion for reconsideration was denied on March 4, 1994. The mandate issued on that date.

In accordance with Rule 13.3 of this Court, this petition for a writ of certiorari was timely filed within ninety days of the March 4, 1994 denial of Petitioner's motion for reconsideration.

The jurisdiction of this Court is invoked through 28 U.S.C. §1257(a).

STATUTES OR PROVISIONS INVOLVED

The Full Faith and Credit Clause of the U.S. Constitution, Article IV, Section 1, states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

An implementing statute as to full faith and credit is found at 28 U.S.C. §1738, recited in full in the Appendix.

STATEMENT OF THE CASE

A. Statement of Material Facts

This matter presenting crucial issues of full faith and credit arises from an initially routine divorce proceeding in Maryland. The issues here concern certain real property of the marriage situated in Florida.

The divorce matter between Petitioner Marjorie H. Eckard and William E. Eckard began in December, 1983. (*Eckard v. Eckard*, Circuit Court for Montgomery County, No. 86824. In general, the various pleadings, documents, and proceedings as to the divorce do not relate to the issues here and are not reproduced in the Appendix to this Petition.)

On June 21, 1985, the Circuit Court issued a Decree of Absolute Divorce. App. at 2a. The Court referred property and other issues of division of marital assets to a Master. Under provisions of Maryland statutes dictating certain time periods by

which such dispositions are to be made,[1] the parties consented to extensions of time necessary in order for a property disposition proceeding to be scheduled before a Master.

On December 23, 1985, the matter was heard before a Master (James L. Ryan). At that time, an agreement between the parties as to property disposition was read into the record. The pertinent part stated: "The other real estate owned by the parties, which consists of a Florida lot, will be sold by the husband, and the net proceeds divided equally, unless the wife chooses to buy the husband's one-half, which she may do prior to his selling it." Further, if Ms. Eckard "wishes to buy the lot she may do so by paying half of 95 percent of the appraisal value and he will undertake to determine what that is." (And see App. p. 11a, 55a).

Both parties were present at this December 23, 1985 proceeding. Both testified they understood and agreed to the entire agreement as recited.

The December, 1985 agreement was not reduced to writing. There was no report by the Master following the proceeding. The matter was not appealed to the Circuit Court nor was it dismissed. It remained an open matter, and the parties proceeded with other property disposition as indicated in the agreement. (See App. at p. 55a).

However, as to the Florida property--which actually was two undeveloped lots in Cape Coral--a dispute between the parties soon developed. In early 1986, Mr. Eckard obtained an appraisal on the property of $60,000. At least one purchase offer was made by Ms. Eckard to Mr. Eckard in early 1987, but it was not accepted.

Mr. Eckard, apparently of the belief that Ms. Eckard had "lost" her right to purchase the property because the parties could

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[1] See Md. Family Law Code Ann., Secs. 8-202 and 8-203.

not agree on a price, had the property listed in August, 1987 with a realtor, noting a selling price of $74,900. However, there was to be no sale of the property by that method.

Mr. Eckard informed Ms. Eckard of the listing and of the revised sale price. He asked whether she wished to purchase the property for 95 per cent of one-half of that figure. She rejected that offer. For the remainder of 1987 and into 1988, the parties were unable to agree on a price for Ms. Eckard's purchase of her husband's share of the Florida lots. Ms. Eckard did not join in the sale of the property through the real estate listing.

In February, 1988, Ms. Eckard sought an order in the Circuit Court for Montgomery County to enforce another portion of the parties' agreement as to payments to her from Mr. Eckard from his retirement. She also sought other relief.

In April, 1988, buyers offered to purchase the Cape Coral lots. They submitted a signed contract which Mr. Eckard also signed. Consequently, he filed pleadings in the Maryland Circuit Court requesting the Court compel Ms. Eckard to execute documents to allow the sale to occur, or to appoint a trustee to sell the property on her behalf.

These and other motions were heard on December 9, 1988. On December 12, 1988 (App. at 4a, docketed on December 13, 1988), the Circuit Court granted Ms. Eckard's motion as to payments to be made by Mr. Eckard (denying, however, other relief requested by her). And the Court granted the relief sought by Mr. Eckard. That is, the Circuit Court stated Ms. Eckard was to "perform all acts and to execute all documents necessary for the sale and settlement of the lots owned by the parties in the State of Florida, described as Lots 32 and 33, Block 372, in Unit 7, as recorded on page 110, PB 12, of the Land Records in the City of Cape Coral, Florida... ." If Ms. Eckard did not do so, the Court would appoint a trustee to sell the property.

This order became a final order in the case. Ms. Eckard did not immediately appeal the order or seek to have it stayed, but instead moved on January 12, 1989 for reconsideration.[2] This motion was denied by the Circuit Court on February 9, 1989.

Ms. Eckard appealed from this denial of reconsideration, but she did not file a brief. Thus, on August 10, 1989, the Court of Special Appeals dismissed. (App. at 6a). A reconsideration of the dismissal sought by Ms. Eckard was denied in September, 1989. (App. at 7a).

Before the appeal was concluded, Mr. Eckard sought on April 19, 1989 to have a trustee appointed to sell the property, as reflected in the Court's December 12, 1988 order.[3] This motion was granted on July 31, 1989. (App. at 8a).

Petitioner Ms. Eckard appealed directly from that order appointing a trustee. In that appeal, the Court of Special Appeals issued an unreported opinion on June 13, 1990 (*Eckard v. Eckard*, Court of Special Appeals, September Term, 1989, No. 1387). (App. at 10a-15a).

The Court of Special Appeals determined the Circuit Court did not abuse its discretion in appointing the trustee. The Court stated it did not reach the merits of the Court's earlier order of December 13, 1988, which was the basis of the appointment, due to dismissal of Ms. Eckard's appeal following the denial of her motion for reconsideration of that earlier order. "Accordingly, regardless of the validity of the order, an issue we

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[2] This motion for reconsideration, not having been filed within 10 days of the Circuit Court's Order, did not stay the time for appeal from that order. See Maryland Rules 8-202(a), 8-202(c), 2-534 and 2-535.

[3] Ms. Eckard had not filed a supersedeas bond to stay the Circuit Court's order which was the subject of her appeal upon denial of her motion for reconsideration, under Maryland Rules Rule 8-422 and 8-423. Thus, the Circuit Court's order remained in effect.

were unable to determine because of the dismissal, the circuit court certainly did not abuse its discretion in thereafter appointing a trustee pursuant to its December order." (App. at 14a). The Court of Special Appeals also concluded the Circuit Court was within its discretion to order legal fees and costs be paid from Ms. Eckard's share of the proceeds. (App. at 14a-15a).

Ms. Eckard did not seek further appellate review of the Court of Special Appeals' June 13, 1990 opinion. The Circuit Court's order therefore was affirmed.

A trustee in Florida thereby was appointed. On July 18, 1990, the Florida trustee, acting on behalf of William Eckard, filed a First Amended Complaint to Enforce a Foreign Judgment in the Circuit Court for the Twentieth Judicial Circuit In and For Lee County, Florida. The Complaint recited the background of the matter and invoked "the doctrine of comity between the States and the Uniform Enforcement of Foreign Judgments Act."

The complaint stated: "By virtue of the settlement agreement being placed before the Court, the parties have placed their property into the jurisdiction of the Maryland Court and are bound by the decision of the Maryland tribunal together with the appellate decisions resulting therefrom." It requested:

> that this Court take judicial notice of the various motions, orders, pleadings and documents which have been filed as exhibits to the complaint and furthermore to declare that the order of the Maryland Circuit Court adjudicating the enforceability of the property settlement agreement be declared a final order for the purposes of enforcement, and furthermore, that the salient portion of that order dealing with Florida property be declared an order enforceable in the State of Florida, and furthermore, taking any and all other actions necessary to enforce that order to include, but

> not limited to issuing orders to the Plaintiff to transfer the subject property within a specific time span, or which orders will act as conveyance of the property to the purchaser(s).

The Florida Court, however, declined the invitation. On February 14, 1991, the Court dismissed the matter with prejudice. (App. at 16a). The Court stated:

> It is clear that the objective of the series of orders of the Maryland Court which culminated on July 31, 1989, in the appointment of a trustee to act for the defendant in the sale of her Florida real estate, was to partition said property and divide the proceeds; consequently, said orders constitute, in effect, a partition judgment which is unquestionably in rem. As the courts of Maryland have no in rem jurisdiction over real property in Florida, the series of Maryland orders filed in this cause are not entitled to full faith and credit recognition by a Florida court.

Shortly afterward, the prospective purchasers of the Florida lots, frustrated with the difficulties related to the sale, withdrew their offer. There were no other purchasers on the scene as to this property.

Further negotiations between the parties in mid-1992 concerning Ms. Eckard's purchase of Mr. Eckard's share of the property did not produce results. Thus, Mr. Eckard returned to the Circuit Court in Maryland seeking to enforce its previous orders concerning the property.

In September, 1992, Mr. Eckard sought a contempt finding by the Circuit Court concerning Ms. Eckard's supposed failure to comply with that Court's December, 1988 and July, 1989 orders. Mr. Eckard requested, among other things, that Ms. Eckard be required to sign a power of attorney to Mr. Eckard so

that he may sell the property.

The matter was heard by the Circuit Court (McKenna, J.) on October 26, 1992. Memoranda were filed by both sides. Argument of counsel, as indicated by the memoranda, focused on whether the Circuit Court had jurisdiction to take equitable action of an in personam nature against Ms. Eckard in an attempt to enforce its orders, even though Florida courts had declined to recognize the Circuit Court's other orders regarding the Florida property. The argument dealt at length with the problem of full faith and credit and recognition by a court where the property is located of a decree of the court of another State. (See Transcript of Proceedings, *Eckard v. Eckard*, Circuit Court for Montgomery County, No. 86824, October 26, 1992, reproduced in pertinent part at App. 17a-App. 38a, and especially 28a-34a and 35a-37a).

At the conclusion of the hearing, the Court determined it had jurisdiction to enforce its prior orders by compelling Ms. Eckard to sign a power of attorney to Mr. Eckard so that he could convey the property. It stated it would find Ms. Eckard in contempt if she failed to do so by the end of that week, which was October 30, 1992. (App. at 37a-38a).

On October 30, 1992, the matter was again heard by the Circuit Court. (App. 39a-48a). Ms. Eckard had not signed the power of attorney. She appeared at the hearing (she also appeared at the October 26 hearing) and stated in response to the Court's inquiry, "I will refuse to sign a power of attorney to my ex-husband hatchetman." (App. at 46a).

The Court thereupon found Ms. Eckard in contempt. The Court stated: "I am ordering you now to be taken to the Montgomery County Detention Center for a period of at least 120 days as of this juncture. You can relieve yourself from staying in the Montgomery County Detention Center at any time by simply signing that document." (App. at 46a).

Ms. Eckard petitioned for a writ of habeas corpus. On November 5, 1992, the writ was granted. (App. 49a). In proceedings of November 9, 1992 (Weinstein, J.), the jail sentence was lifted and Ms. Eckard was released on $1,000 bond. (App. 50a-52a).

Ms. Eckard appealed the order finding her in contempt. The Court of Appeals of Maryland entertained the appeal prior to decision from the Court of Special Appeals.[4]

B. Opinion of the Maryland Court of Appeals

The Maryland Court of Appeals decision was issued January 18, 1994. (*Eckard v. Eckard*, 333 Md. 531, 636 A.2d 455 (1994), reproduced beginning at App. 53a). The Court of Appeals affirmed the Circuit Court's finding that Petitioner Ms. Eckard was in contempt and likewise affirmed the Circuit Court's actions in that regard.

The Court of Appeals determined the Circuit Court could exercise in personam jurisdiction over a party before it to enforce its orders, even if the orders involved property outside its jurisdiction and even if the courts of the State where the property is located have declined to recognize orders of that same court as to the property. The Court of Appeals indicated that had Ms. Eckard signed the power of attorney, even under coercion, it would have been effective in Florida since title to the Florida property would be transferred through a private party (acting through the power of attorney) rather by a foreign court decree.

The Court of Appeals reviewed other authorities on the issue, including this Court's decisions of *Fall v. Eastin*, 215 U.S. 1 (1909) and *Massie v. Watts*, 10 U.S. (6 Cranch) 148 (1810), to the effect that "'in a case of fraud, of trust, or of contract, the

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[4] See Md. Courts and Judicial Proceedings Code Ann., Sec. 12-307(1) and Maryland Rule 8-303(e).

jurisdiction of a court of chancery is sustainable wherever the person be found, although lands not within the jurisdiction of that court may be affected by the decree.'" (333 Md. at 541, App. at 63a-64a, quoting from *Massie*, 10 U.S. at 160.) And "'when the subject-matter of a suit in a court of equity is within another state or country, but the parties within the jurisdiction of the court, the suit may be maintained and remedies granted which may directly affect and operate upon the person of the defendant, and not upon the subject-matter, although the subject-matter is referred to in the decree, and the defendant is ordered to do or refrain from certain acts toward it, and it is thus ultimately but *indirectly* affected by the relief granted.'" (333 Md. at 544, App. at 66a, quoting from *Fall v. Eastin, supra*, 215 U.S. at 11-12.)

The Court of Appeals also noted *Donigan v. Donigan*, 208 Md. 511, 119 A.2d 430 (1956) (discussed, as was *Fall v. Eastin*, at length at the Circuit Court proceeding of October 26, 1993), observing that *Donigan* "restated" these principles of court authority over persons before it notwithstanding its lack of in rem jurisdiction the matter. The Court concluded, after also finding that a deed executed under threat of court sanction is nevertheless valid (333 Md. at 546, App. at 68a):

> From the standpoint of the power of the equity court, there is no difference between compelling, by contempt, the signing of a deed, and compelling, by contempt, the signing of a power of attorney to sign a deed.

Following the Court of Appeals' affirmance of the Circuit Court's actions, Petitioner submitted a motion for reconsideration. That motion was denied March 4, 1994.

REASONS FOR GRANTING WRIT

I. THIS COURT MUST REVISIT FALL V. EASTIN AND DECLARE A WIDER ROLE FOR THE FULL FAITH AND CREDIT CLAUSE WHERE THE COURT OF ONE STATE DETERMINES THE RIGHTS OF PARTIES PROPERLY BEFORE IT, INCLUDING DISPOSITION OF PROPERTY IN ANOTHER STATE

This matter squarely presents the issue of a wider application of the Full Faith and Credit Clause so as to prevent the difficulty which led to the contempt here. Petitioner first clarifies the issues by noting what she does not contend here.

First, Petitioner does not here challenge the authority of the Circuit Court in this proceeding, once an agreement of the parties was read into the record and accepted, to issue various orders as to disposition of marital assets relating to that agreement. To the extent Petitioner could challenge these orders or their basis, those issues were settled in the disposition of Petitioner's earlier appeals to the Court of Special Appeals.

Second, Petitioner does not challenge an issue accepted by all concerned--the Maryland Circuit Court did not have in rem jurisdiction directly to affect the property in Florida. The Circuit Court could not by its orders alone direct title to the property to be transferred or direct the property to be sold.

Finally, although she suggested before the Maryland Circuit Court and the Court of Appeals that the Court had no jurisdiction to act over her, Petitioner does not press that point here. That is, she would concede the Maryland Circuit Court had the power to enforce its orders by an in personam decree as to a party over whom the court has jurisdiction, even if the orders to be so enforced involved property outside the court's jurisdiction.

Indeed, the power of an equity court to take such action has been often stated. See *Fall, supra*, and, e.g., Annotation, *Power of Divorce Court to Deal with Real Property Located in Another State*, 34 A.L.R.3d 962, esp. sec. 4(a).

Nevertheless, given the situation as it existed on October 26, 1993, the Circuit Court's decision to require Petitioner to sign a power of attorney to her husband so he could sell the Florida property, and its decision of October 30, 1993 finding her in contempt for refusing to do so, was a mere exercise in theatrics that was as painful as it was fruitless. It is unclear, notwithstanding the Maryland Court of Appeals statements in this regard, how Florida would have treated a power of attorney so executed and whether Florida would likewise have refused to recognize any further action related to the Florida property based upon proceedings in a Maryland Circuit Court.

Further, it was equally clear that Petitioner continued to be unsatisfied with the impasse, after years of negotiating with her former husband, over a fair price for her husband's share of the Florida lots. The Circuit Court well knew that threatening Petitioner with contempt over Respondent's insistence that she sign away her bargaining power would not advance the situation.

Rather, this scenario presents the issue suggested by Petitioner in the proceedings of October 26 and October 30, 1993 but avoided both by the Circuit Court and by the Court of Appeals--whether the Florida court *was obligated* under the Full Faith and Credit Clause to recognize the Maryland court's orders. It was Florida's rejection of the actions of the trustee appointed by the Maryland court (again, issues related to that appointment must be considered disposed of for purposes of this Petition), which created the deadlock that led to the contempt proceeding.

The Florida trustee might well have avoided the difficulty entirely by filing a simple partition action in Florida,

rather than by seeking Florida court recognition of the Maryland court's orders. Nevertheless, once the Complaint, as it was filed, was before the Florida court, the Florida court's dismissal of it ran contrary to the spirit of the Full Faith and Credit Clause and to modern considerations bearing upon that Clause in such circumstances. To the extent that principles reflected in *Fall v. Eastin* provided the Florida court with authority for its action, that decision must be revisited.[5]

Fall v. Eastin concerned a divorce in the State of Washington involving certain realty in Nebraska. The Washington court ordered the Nebraska land to be set aside as the wife's separate property and ordered the husband to convey it to her. The husband instead conveyed the property to a third party.

The Washington court appointed a commissioner who executed a deed for the Nebraska property to the wife, which was recorded in Nebraska. The wife then sued in Nebraska to invalidate the husband's earlier conveyance. That relief was granted.

The Supreme Court of Nebraska at first affirmed, but, upon rehearing, the court reversed, with the result that the earlier conveyance of the property by the husband to the third party was

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[5] Calling upon this Court to revisit that decision is not contrary to Petitioner's position before the Circuit Court and before the Court of Appeals in which she invoked the decision--although it may at first seem so. Petitioner advanced the view that the Maryland court had no jurisdiction to act upon her, a position well necessitated by the circumstances but nevertheless deducible to some extent from the authorities noted by her. However, even before these courts, Petitioner indicated another primary concern--obviously beyond the reach of the Maryland courts--was whether the Florida court's action refusing to recognize the Maryland court orders could be justified under the Full Faith and Credit Clause. Also, the issue of what authority the Maryland court had to take further action concerning the property once the Florida court had denied full faith and credit to previous orders of the Maryland court concerning the property is separate from the issue of whether the Florida court should have been permitted to act as it did, in the first place.

upheld. This was a plain rejection of attempts by the Washington court to affect title to the Nebraska property. See *Fall v. Fall*, 75 Neb. 104, 113 N.W. 175 (1907). This Court affirmed.

This Court concluded, in a majority opinion by Mr. Justice McKenna, that the Washington trial court had no authority to attempt to affect title to the Nebraska property. However, it recognized that the Washington court could utilize its general in personam powers over the parties before it and direct compliance with its orders by these means. The Court concluded that the Nebraska court's action to not recognize the Washington court decrees did not violate the Full Faith and Credit Clause.

Fall v. Eastin has become basic authority for the traditional view that a court in a State where real property is located need not recognize orders from a court in another State which may have jurisdiction over the parties but not the property. The principles reflected in *Fall v. Eastin* are a well-known exception to the mandate of the Full Faith and Credit Clause, based on the contention that the issuing court had no jurisdiction to pass orders as to property not within its borders--thus the receiving court need not recognize such orders.

That this approach, however, begs the question of the import of the Full Faith and Credit Clause in such situations has been the subject of much of the commentary and criticism concerning *Fall v. Eastin*. Among the most insightful discussions are: W. Barbour, *The Extra-Territorial Effect of the Equitable Decree*, 17 Mich. L.Rev. 527 (1919); E. Lorenzen, *Application of Full Faith and Credit Clause to Equitable Decrees for the Conveyance of Foreign Land*, 34 Yale L. J. 591 (1925); B. Schwartz, *Fall v. Eastin Revisited: Extraterritorial Effect of Foreign Land Decrees*, 54 Dick. L.Rev. 293 (1950), and B. Currie, *Full Faith and Credit to Foreign Land Decrees*, 21 U. Chi. L.Rev. 620 (1959). These commentators, others cited by

them, other authorities, and other courts conclude that upon more careful review, certain flaws in the *Fall v. Eastin* scenario or analysis call into question whatever guidance it provides in the Full Faith and Credit discussion. The commentators criticize the fine distinctions which allow receiving courts in jurisdictions where property is located to reject orders from issuing courts which have determined the rights of parties properly before those courts, and suggest such orders be given full faith and credit without reservation.

Barbour, writing only 10 years after *Fall v. Eastin*, pointed to a too-strict interpretation of the authority of an equity court, stating "When a judge sitting in equity today declares that a foreign decree ordering the conveyance of land creates no obligation but merely a duty owed by the defendant to the court, he is assuming that equity has made no progress since the time of Coke." (17 Mich. L.Rev. at 528, footnote omitted). Noting an earlier statement by Chief Justice Marshall that "the judgment of a state court should have the same credit, validity and effect in every other court in the United States which it had in the State where it was pronounced" (see 17 Mich. L.Rev. at 530, and fn. 16), Barbour indicated the problem of whether a "foreign" court had "jurisdiction" to issue orders as to property in another State requires an examination of the nature of jurisdiction.

With respect to the issue of jurisdiction, he asserted, at 17 Mich. L.Rev. at 533:

> If the defendant is personally before a court of equity, the court has power to order him to convey foreign land. Such a decree is an effective judgment and determines conclusively his obligation to convey and this obligation remains binding upon the person of the defendant wherever found. Such a decree ought to be entitled to full faith and credit at the situs of the land.

Barbour adds (footnote omitted):

> Normally the decree will be made to effectuate some antecedent equity, growing out of trust or contract. But the constitutional effect of the decree should be independent of the ground upon which it is made; for a personal decree is equally within the competence of a court which has the defendant within its power, whatever its ground, and however erroneous. Such a decree may perhaps be attacked upon the ground that its enforcement would violate some fundamental policy of the laws of the state where the land is situate, but such a question of policy should not be confused with jurisdiction.

Along with *Fall v. Eastin* (giving special treatment to the special concurrence of Mr. Justice Holmes), Barbour reviewed some of the oft-cited authorities of the time as to full faith and credit in such situations, including *Burnley v. Stevenson*, 24 Oh.St. 474 (1873); *Bullock v. Bullock*, 52 N.J.E1. 561 (1894), and *Dunlap v. Byers*, 110 Mich. 109 (1896). He states: "The notion that an equitable decree which orders the conveyance of land cannot create a binding obligation is the last survival of an old dogma which is today shorn of most of its force." (17 Mich. L.Rev. at 539). And he contended that "The broad distinction between decrees on the one hand and legal judgments on the other finds little support in the cases." (17 Mich L. Rev. at 541 and see discussion at 542-545).

Describing the acceptance of the view that foreign money judgments are entitled to recognition, "If the doctrine applies to decrees of this type it should apply to decrees ordering a conveyance." He declared, "Distinctions are necessary and inevitable in any legal system, especially one founded upon

precedent, but it is perilous to preserve distinctions for themselves alone, for the delight in legal subtlety."

Lorenzen, likewise reviewing at length the development of equitable jurisdiction and various cases on the problem, states that (34 Yale L. J. at 607-608):

> The real basis for the objection to the enforcement of foreign equitable decrees for the doing of something other than the payment of money arises from the feeling that such a recognition is equivalent to allowing the courts of another state to create property rights in domestic land. Because of this, the old dogma is persisted in that equitable decrees in the absence of statute do not create obligations at all, but are only in the nature of process or execution. We have seen, however, that the great weight of modern authority is to the contrary and that the whole history of the relation between equitable decrees and judgments at law unmistakably points to the conclusion that they differ to-day, not as regards their essential nature and effect, but only as regards the remedy by which the legal and equitable obligations are respectively enforced.

Lorenzen states, "The fundamental rule in Anglo-American law that the title to land is controlled by the law of the situs, however true it may be in general, does not mean, therefore, that all personal obligations with reference to foreign land, even if they are specifically enforceable, must be determined in accordance with the law of the situs." (34 Yale L. J. at 609, and see also 609-610). Reviewing *Fall v. Eastin*, which he described as a

"very unsatisfactory" opinion,[6] Lorenzen also focuses on Mr. Justice Holmes' concurrence and suggests that, along the lines of that separate opinion, a better approach would be to enforce the foreign decree as to the immediate parties, but not as to third parties. (34 Yale L. J. at 611).

Schwartz concludes more broadly that equitable decrees declaring conveyance of foreign land, or regarding foreign property, are entitled to full faith and credit. He notes that "On its face, the full faith and credit clause does not differentiate between the types of judicial proceedings which come within its purview." (54 Dick. L. Rev. at 297). He reviews the background of *Fall v. Eastin* and suggests that matters such as the limited authority of the Nebraska courts in reviewing the Washington order had a bearing on the perplexing result in that case.

Schwartz underscores the importance of recognizing such orders, stating "Foreign judgments are enforced not as a courtesy due to the foreign sovereign, but on the ground that a valid judgment by his courts raises an obligation to obey it which can be enforced by action thereon." (54 Dick. L. Rev. at 300). Although divorce cases often produce contrary results, "there is no valid reason, other than the mere fact that they are divorce cases, for not applying the normal rule with regard to the recognition of decrees for the conveyance of land by the courts of the situs." (54 Dick. L. Rev. at 303).

Currie, drawing from these and other commentaries (see 21 U. Chi. L. Rev. at 620, fns. 4-11), noted, in a remark particularly appropriate (21 U. Chi. L. Rev. at 627, footnote omitted but see fn. 20 and emphases supplied):

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[6] See 34 Yale L. J. at 605. Lorenzen also comments, "This is perhaps accounted for by the fact that the court received no aid from counsel, the brief submitted on behalf of Mrs. Fall being very poor indeed. No brief was filed for the defendant in error."

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[6] See 34 Yale L. J. at 605. Lorenzen also comments, "This is perhaps accounted for by the fact that the court received no aid from counsel, the brief submitted on behalf of Mrs. Fall being very poor indeed. No brief was filed for the defendant in error."

> If it is difficult to find justification in legal history or theory for the position that the existence of an antecedent obligation is determinative of the question of recognition, it is impossible to find it in pragmatic considerations. *The chief practical effect of such a requirement would be to withhold recognition from decrees entered in divorce proceedings; but those are among the very proceedings in which recognition is most imperative.* In the ordinary case of fraud, trust, or contract the plaintiff can bring his action at the situs of the land, though he is not required to undergo the possible inconvenience of doing so. But since an action for divorce must be brought at the domicile of one of the parties, the rights of the spouses in land located elsewhere must be adjudicated away from the situs if multiplicity of litigation is to be avoided. *Thus the effect of the suggested requirement would be to give recognition where it is needed least and to withhold it where it is needed most.*

Currie further contends there is no overriding policy interest of a State requiring rejection of a foreign court's decree as to land in that State. (See 21 U. Chi. L. Rev. at 629-631).

Currie roundly criticizes *Fall v. Eastin.* (*Id.* at 638-643 and 648-651). The commentator declared it to be "a most unhappy decision." He suggested the cases relied upon by the majority (in the opinion by Mr. Justice McKenna) do not support the conclusions advanced--and undertook a painstaking review of the chief authorities noted by *Fall v. Eastin* and bearing on the issue here. (See *Id.* at 645-655). Currie also undertakes a review of several commentaries on the case (see the summary at p. 671).

Suggesting that one approach would be an action for

declaratory judgment in State where the property is located, Currie maintains (*Id.* at p. 676):

> If the foreign decree is properly framed, and if the action at the situs is properly conceived, there is a fair chance that the court at the situs will treat the decree as conclusive, at least as to the findings of fact supporting it. In some cases--i.e., where the law applied in the respective states is the same--this effect for the foreign decree will be decisive. To be sure, such a result is anomalous. It would seem that, if the foreign court acted beyond its jurisdiction, its judgment should not be treated as conclusive for any purpose; and that, on the other hand, if it acted within its jurisdiction, its judgment should be conclusive both as to law and fact. There is no analogy for this piecemeal application of res judicata. We are not here dealing with the principle of collateral estoppel, which comes into operation when a second suit between the parties involves a different cause of action. The principle involved is that of merger, or of the conclusiveness of a claim which has been reduced to a judgment in a competent court.

And see also, generally, E. Messner, *The Jurisdiction of a Court of Equity Over Persons to Compel the Doing of Acts Outside the Territorial Limits of the State*, 14 Minn. L. Rev. 494 (1930), and Mortland, *Interstate Federalism: Effect of Full Faith and Credit to Judgments*, 16 U. Dayton L. Rev. 46 (1990).

This Court has not undertaken a comprehensive review of *Fall v. Eastin*. The principles reflected in the decision have been noted by this Court, generally in passing, regarding the exception to the Full Faith and Credit mandate where the foreign court deals with property outside its jurisdiction. See, e.g.,

Milwaukee County v. M.E. White Company, 296 U.S. 268, 273 (1935); *People of the State of New York ex rel. Halvey v. Halvey*, 330 U.S. 610 (1947); *May v. Anderson*, 345 U.S. 528 (1953); *Western Union Telegraph Co. v. Commonwealth of Pennsylvania*, 368 U.S. 71 (1961), and *Underwriters National Assurance Co. v. North Carolina Life and Accident and Health Insurance Guaranty Association*, 455 U.S. 691 (1982). And see also *Michigan Trust Co. v. Ferry*, 228 U.S. 346 (1912) and *Durfee v. Duke*, 375 U.S. 106 (1963).

However, reflecting the views of the commentators noted, other courts have determined that where a court has determined the rights of parties properly before it, the court's judgment is entitled to full faith and credit even if that judgment or order concerns property outside the court's jurisdiction. This approach more properly meets the interests of the Full Faith and Credit Clause not only as to the finality of judgments but also, in situations such as divorce matters, in permitting a single forum with jurisdiction over the parties to conclude the rights of those parties and allowing implementing action to be taken without the shadow of further jurisdictional difficulty.

Thus, in *In re Estate of Mack*, 373 N.W.2d 97 (Iowa 1985), the Supreme Court of Iowa upheld the effect of a judgment of a Missouri court in a divorce matter involving 115 acres of real estate in Cedar County, Iowa in which the Missouri court declared that the Iowa land was the wife's separate property. The Iowa court declined to recognize the Missouri court declaration as to the property, granting the husband's motion for summary judgment to the effect that the property was determined to still be jointly owned by the parties.

On appeal from this judgment, the Supreme Court of Iowa reversed. Reviewing some of the authorities and approaches to the full faith and credit issue, the court concluded:

> the better reasoned cases have determined that, regardless of whether there is an order for a conveyance, if a court having personal jurisdiction over the parties adjudicates their rights or obligations in reference to any *res*, wherever situated, its decree is entitled to full faith and credit in the situs state.

The *Mack* court also noted Restatement (Second) *Judgments* §43 in support of this view. The court added:

> A contrary thesis can only be justified on the ground that granting recognition to the foreign adjudication would violate some fundamental policy of the state where the land is located. Any exception to the requirement of full faith and credit due to a variance in the policy of the situs state and that of a foreign jurisdiction may only based upon the most serious and justifiable interests of the forum.

The court stated even if such an approach is not mandated by the Full Faith and Credit Clause, it should be adopted under principles of comity. And see other cases cited, e.g., *Gammon v. Gammon*, 684 P.2d 1081 (Mont. 1984) and *Miller v. Miller*, 109 Misc.2d 982, 441 N.Y.S.2d 339 (1981) ("a court having personal jurisdiction over parties can adjudicate their personal rights and obligations in reference to any res, wherever situated"--and see cases cited).

In *Barber v. Barber*, 51 Cal.2d 244, 331 P.2d 628 (1958), also cited by *Mack*, as the effect of an Oklahoma divorce judgment upon California courts concerning land located in California, the Supreme Court of California likewise found that a court having jurisdiction of the parties may adjudicate their rights to land located in another state. This adjudication is to be given full faith and credit status regardless of whether the decree

orders execution of a conveyance, even though the decree itself cannot determine title in the State where the land is located. Citing *Rozan v. Rozan*, 49 Cal.2d 322, 317 P.2d 11 (1957).

For additional discussion of these principles, see Annotation, *Res Judicata or Collateral Estoppel Effect, in State Where Real Property is Located, of Foreign Decree Dealing with Such Property*, 32 A.L.R.3d 1330, esp. secs. 3 and 4(a).

Based on these principles and authorities, the Florida Lee County Court improperly denied recognition to orders of the Maryland Montgomery County Circuit Court as to disposition of the Florida lots. At least one of the authorities cited by the Florida court in its dismissal order prominently noted *Fall v. Eastin*. See *Sammons v. Sammons*, 479 So.2d 223 (Fla.App. 3d Dist. 1985) and see *Pawlik v. Pawlik*, 545 So.2d 506 (Fla.App. 2d Dist. 1989).

It would thus appear that *Fall v. Eastin*, 85 years after it was decided, should receive additional attention. The wider role for the Full Faith and Credit Clause recognized by various commentators and courts should be plainly stated by this Court.

Such an approach would avoid the difficult circumstances often facing parties in proceedings, such as divorce matters, as to property outside the jurisdiction of the forum court--difficulties which led here to the incarceration for contempt of court of a woman who desired not to challenge the court's authority but to obtain a fair and adequate disposition of certain marital property.

II. THE CIRCUIT COURT ABUSED ITS DISCRETION IN FINDING PETITIONER IN CONTEMPT OF COURT

Thus, the Maryland Court of Appeals improperly approved the actions of the Circuit Court for Montgomery County. While it may be well recognized that the Circuit Court has authority to utilize its general equitable powers to enforce its orders, the more pertinent question is whether it *should* have done so. That is, where legal correctness does not produce justice, a wise court should choose the latter.

While a direct partition action filed by the trustee in the Florida court at the outset might have prevented this situation, once the Florida court declined to recognize the Maryland court orders as the trustee had requested, a direct partition action would have been the next logical step. (And, indeed, such a partition action eventually was filed.) Thus, the Maryland Circuit Court, if it truly desired an end to the years of litigation here, could have stayed its proceedings pending determination of a partition action to be filed by the trustee in Florida.

The Circuit Court's authority to appoint the trustee had been settled in earlier appeals. Petitioner was bound to accept the validity of the trustee's actions. While the contempt proceeding brought an additional note of drama to the litigation, it advanced the situation not one iota. See generally, Annotation, *Divorce: Propriety of Using Contempt Proceeding to Enforce Property Settlement Award or Order*, 72 A.L.R.4th 298.

Petitioner submits that the potential for conflict between courts of different States over orders concerning disposition of property, while unusual here in the extremes to which the Maryland Circuit Court went in seeking to enforce its orders when that conflict arose, is not unique in domestic relations matters. Indeed, in a mobile, wide-reaching society where marital

assets often include ownership of property in other jurisdictions, the potential for these conflicts is quite real--notwithstanding uniform laws seeking to provide some standard approach to such situations, or the courtesies of comity between the States.

If the view continues to prevail that a court with jurisdiction over the parties before it has no authority to issue orders as to disposition of property in another State that is jointly held by the parties--who have litigated their dispute and who have submitted to a judgment concerning disposition of such property--with the unfortunate result that these orders are given no weight by courts of the State where the property is located, uncertainty and confusion are likely to be continuing obstacles to the final and proper resolution of these matters. For a judicial system whose courts are already overburdened and where litigation is too often protracted, additional difficulties which raise the daunting prospects of inter-court conflict and layers of complexity to litigation are to be avoided whenever possible.

Certainly the Framers did not place the Full Faith and Credit Clause in the Constitution to ease crowded court dockets. Rather, and more to the point, the spirit of full faith and credit between the States is precisely the approach required to meet the difficulties inherent in situations such as the present one--complications which obviously have not faded in the 85 years since *Fall v. Eastin*. Traditional notions of jurisdiction should be balanced against the mandate of full faith and credit, the necessity for a finality to litigation, and the desire for swift resolution of disputes.

Otherwise, these drastic situations will continue to present themselves. Parties avail themselves of the court system to adjudicate their dispute and issue final orders concerning disposition of property--not to be tangled in arcane disputes between courts of different States over issues grounded in ancient

notions of jurisdictional authority, and most assuredly not to be jailed for failing to "comply" with a decree as to out of State property issued by a court which itself was powerless to effectuate its decrees on its own. The Full Faith and Credit Clause must be employed to bring order to this unsettled scene.

Regardless, it should never have gotten this far. Once the trustee was appointed, Maryland court orders presented to the Florida courts by the trustee, which orders reflected full litigation of the rights of the parties properly before the Maryland court, were entitled to full faith and credit as to the Florida property. This Court should revisit *Fall v. Eastin* and plainly say so.

CONCLUSION

There perhaps can be no better conclusion than that offered by Professor Currie (see 21 U. Chi. L. Rev. at 678-679), as to a review by this Court of "the unfortunate decision" of *Fall v. Eastin*:

> If [the Supreme Court] finds that, contrary to its earlier decision, the state of the situs must treat the foreign decree as res judicata, it will remove an illogical and inconsequent gloss from the law governing the relationship between the states in our federal system; it will contribute materially to a more complete fulfillment of the Constitution; it will remove a source of hardship and unnecessary relitigation; and it will do this with no impairment of any substantial interest of the situs state in controlling the land located within its borders. In so doing, in this crucial situation, it may well open the way for eventual rectification of some of the undesirable results which flow from one or the other of the stubborn doctrines which combined to produce *Fall v. Eastin*.

THEREFORE, Petitioner Marjorie H. Eckard requests of this Court that it GRANT her Petition for a Writ of Certiorari.

Respectfully submitted,

John MacDonald King
(Counsel of Record)
King & King, P.A.
13228 Executive Park Terrace
Germantown, Maryland 20874
(301) 428-0555

Darrel L. Longest
13230 Executive Park Terrace
Germantown, Maryland 20874

Counsel for Petitioner

No. 93-_____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1993

MARJORIE H. ECKARD
Petitioner

V.

WILLIAM E. ECKARD
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

APPENDIX TO PETITION

John MacDonald King
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(301) 428-0555

Darrel L. Longest
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(301) 972-1900
Counsel for Petitioner

28 U.S.C. Sec. 1738:

The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory, or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory, or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARJORIE H. ECKARD,	*	
	*	
Plaintiff and	*	
Counter-Defendant	*	
	*	
VS.	*	Equity No. 86824
WILLIAM. E. ECKARD,	*	
	*	
Defendant and	*	
Counter-Plaintiff	*	

DECREE OF ABSOLUTE DIVORCE

Upon consideration of the Counter-Plaintiff WILLIAM E. ECKARD's Amended Counter-Claim for Absolute Divorce (the caption of said pleading having been amended by interlineation), this Court having heard all testimony relevant to the grounds for divorce asserted in said Amended Counter-Claim and being otherwise fully advised in the premises, and the parties having stipulated that this Court reserve its jurisdiction to determine all issues pending between the parties relevant to the determination of marital property, the amount, if any, of any monetary award, counsel fees, and alimony, pursuant to Family Law Article Section 8-203, and Section 11-102, Annotated Code of Maryland, and the parties having further stipulated that such issues be determined and referred to the Domestic Relations Master pursuant to Maryland Rule 2-541(c), it is this 21 day of June, 1985,

ORDERED that the Counter-Plaintiff WILLIAM E. ECKARD be and he is hereby divorced absolutely from the

Plaintiff and Counter-Defendant MARJORIE H. ECKARD; and it is further

ORDERED that all issues pending between the parties relevant to the determination of marital property, the amount, if any, of any monetary award, counsel fees and alimony, be reserved pursuant to Family Law Article Section 8-203 and Section 11-102, and that such issues be referred to the Domestic Relations Master of this Court for a determination before said Master on October 23, 1985, both parties having expressly agreed to extend the 90 day period for the resolution of such issues to and including October 23, 1985 and for such additional period as may be necessary for this Court to finally rule on said issues and it is further ORDERED that the Pendente Lite Order of February 3, 1984 shall remain in effect pending such final decision.

_____
JUDGE, Circuit Court for
Montgomery County, Maryland

Consented to as to form
and content:

/s/_____
IVAN J. SHEFFERMAN
Attorney for Plaintiff

/s/_____
JOSEPH J. D'ERASMO
Attorney for Defendant

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARJORIE H. ECKARD, PLAINTIFF	:	
VS.	:	EQUITY NO. 86824
WILLIAM. E. ECKARD, DEFENDANT	:	

ORDER

This matter having come before the Court on Plaintiff/ Counter-Defendant's "Motion to Enforce Agreement, and for Accounting and Rule to Show Cause" and on the Defendant/ Counter Claimant's "Motion for Summary Judgment, for the Appointment of a Trustee, to Quash Trial Subpoena, and for Attorney's Fees", both parties through their respective attorneys having submitted Memoranda in support of their positions, and oral argument having been heard by the Court; further, the previous proceedings relevant to the issues now pending having been read and considered, it is therefore this 12th day of December, 1988, by the Circuit Court for Montgomery County, Maryland,

ORDERED that the Plaintiff/Counter Defendant's Motion to Enforce the Agreement between the parties be, and the same is hereby granted to the extent that the Agreement reached between the parties on December 23, 1985 is hereby incorporated, but not merged, in the original Decree of Absolute Divorce filed in this cause on June 21, 1985; and it is further

ORDERED that the balance of the remedies contained in the Plaintiff/Counter Defendant's Motion to Enforce

Agreement and for Accounting and Rule to Show Cause be, and the same are hereby denied; and it is further

ORDERED that the Defendant/Counter Claimant's Motion for Summary Judgment requiring the Plaintiff/Counter Defendant, MARJORIE H. ECKARD, to perform all acts and to execute all documents necessary for the sale and settlement of the lots owned by the parties in the State of Florida, described as Lots 32 and 33, Block 372, in Unit 7, as recorded on page 110, PB 12, of the Land Records in the City of Cape Coral, Florida, be, and the same is hereby granted; and it is further

ORDERED that in the event the said Plaintiff/ Counter Defendant fails to perform all acts and to execute all documents necessary for the sale and settlement of said lots, that this Court shall, upon motion of the Defendant/Counter Claimant, appoint a Trustee, resident in the State of Florida, to act in the place and stead of the Plaintiff/Counter Defendant, MARJORIE H. ECKARD, with respect to the sale and settlement of said lots; and it is further

ORDERED that the Defendant/Counter Claimant's Motion to Quash Trial Subpoena is hereby granted; and it is further

ORDERED that the Motions of both parties for legal fees and costs be, and the same are hereby denied.

_____

J. JAMES MCKENNA, Judge
Circuit Court for Montgomery
County, Maryland

Marjorie H. Eckard	*	
Appellant	*	Court of Special Appeals No. 343
v.	*	
William E. Eckard	*	September Term, 1989
Appellee	*	

ORDER

It appearing that the appellant is in default of Maryland Rule 8-502, the brief due on August 2, 1989, not having been filed, it is this 10th day of August, 1989, by the Court of Special Appeals, upon its own motion, pursuant to Maryland Rule 8-602(a)(7),

ORDERED that the captioned appeal be, and it is hereby, dismissed.

/s/
Chief Judge

COURT OF SPECIAL APPEALS
Courts of Appeal Building
Annapolis, Maryland 21401
(301) 974-3646

Leslie D. Gradet
Clerk

Susan Rosenblum
Chief Deputy

September 14, 1989

Ms. Marjorie H. Eckard
12301 St. James Road
Potomac, Maryland 20854

Re: Marjorie H. Eckard vs. William E. Eckard
No. 343, September Term, 1989

Dear Ms. Eckard:

Be advised that by Order of this Court dated September 13, 1989, appellant's Motion for Reconsideration of the Order of this Court of Special Appeals that the Above-Captioned Appeals be Dismissed pursuant to Maryland Rule 8-602 (a) (7) was denied. The mandate issued on September 11, 1989 leaving the Court without jurisdiction in the matter.

Very truly yours,

/s/
Leslie D. Gradet
Clerk

LDG:ls
cc: Joseph D'Erasmo, Esquire

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARJORIE H. ECKARD	:	
PLAINTIFF	:	
VS.	:	EQUITY NO. 86824
WILLIAM. E. ECKARD	:	
DEFENDANT	:	

ORDER APPOINTING TRUSTEE AND FOR ATTORNEY'S FEES AND COSTS

Upon consideration of the Motion of WILLIAM E. ECKARD for the appointment of a Trustee and for the imposition of attorney's fees and costs, and pursuant to Annotated Code of Maryland, Article 16, Sec. 107, Maryland Rule 1-341, and on the basis of this Court's Order filed December 13, 1988, it is, this 31 day of July, 1989,

ORDERED THAT Karl C. Landsteiner, Esquire, Suite 300 NCNB Bank Building, 2133 Winkler Avenue, Fort Myers, Florida 33911, be and the same is hereby appointed as the Trustee of this Court to perform all acts and to execute all documents, in the place and stead of MARJORIE H. ECKARD, necessary to carry out the sale and settlement of lots owned by the parties to this action, described as Lots 32 and 33, Block 372, in Unit 7, as recorded on page 110 PB 12 of the Land Records in the City of Cape Coral, Florida; and it is further

ORDERED that upon the filing of a Petition, describing in reasonable detail the services performed and the fees and costs incurred in order to (a) obtain this Order, and (b)

provide for the services of the Trustee, appointed by this Order, this Court shall direct that said fees and costs shall be paid out of the portion of the sales proceeds to be distributed to the Plaintiff and Counter-Defendant, MARJORIE H. ECKARD.

_____

JUDGE, Circuit Court for
Montgomery County, Maryland

UNREPORTED

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 1387

September Term, 1989

MARJORIE H. ECKARD

V.

WILLIAM E. ECKARD

Garrity,
Bell, Rosalyn B.,
Cathell,

JJ.

Per Curiam

Filed: June 13, 1990

This is an appeal from an order entered On July 31, 1989, by the Circuit Court for Montgomery County (McKenna, J.), appointing a Trustee to carry out the appellant's obligations pursuant to a previous court order. The appellant raises the following issues for our consideration:

I. Whether the July, 1989 order was ambiguous and inconsistent with the court's previous December, 1988 order;

II. Whether the lower court abused its discretion in ordering the appointment of a trustee in its July, 1989 order; and

III. Whether the lower court erred in ordering legal fees and costs to be paid by the appellant.

FACTS

The parties obtained an absolute divorce in June, 1985. Thereafter, in December, 11.985, they appeared before the Domestic Relations Master to put their property settlement agreement on the record. Among the property issues resolved was the disposition of an unimproved parcel of land in Cape Coral, Florida.

Under the terms of this agreement, the appellant, Mrs. Eckard, had the option to purchase the Florida lot by paying Mr. Eckard one-half of ninety-five percent of its appraised value. The lot had been appraised at $60,000. Thus, pursuant to the terms of the agreement, the appellant could purchase the property for $28,500. Approximately one year later, in January, 1987, the appellant wrote to the appellee offering $17,500 for the appellee's one-half share of the property. The appellee wrote back that the listing price was $60,000 and that the proposed figure was

unacceptable. The appellant, in turn, wrote back that she had arrived at her figure by subtracting a "built in" 10% commission on the property, closing costs and attorneys' fees, and an additional 5% as per the terms of the agreement. The new figure proposed, based on these calculations was $12,500.

The appellee, again, declined to accept the appellant's offer and wrote that he was putting the property up for sale at the listing price of $60,000. The appellant was notified by the appellee's Florida attorney in September, 1987, that the revised sale price of the property was $74,900. Included in that correspondence was the following: "Mr. Eckard has further informed me that I may offer to you the opportunity to purchase that lot, if you desire to pay to him 95% of his one-half interest, that being the equity of that lot." The appellant responded that she did not authorize the listing of the lot and that she would not pay what she believed to be an unreasonable amount.

The parties continued to dispute this issue over the next year, without resolution. In April of 1988, the appellee proceeded with a contract of sale to third parties. A motion to enforce the parties' agreement and a motion for summary judgment were filed, and an order was entered on December 13, 1988, stating, in pertinent part:

> ORDERED that the Defendant/Counter Claimant's Motion for Summary Judgment requiring the Plaintiff/Counter Defendant, MARJORIE H. ECKARD,, to perform all acts and to execute all documents necessary for the sale and settlement of lots owned by the parties in the State of Florida, described as . . . be and the same is hereby granted and it is further
>
> ORDERED that in the event the said Plaintiff/Counter Defendant fails to perform all acts and to execute all documents necessary for the sale and settlement of said lots, that this Court shall, upon motion of the

> Defendant/Counter Claimant, appoint a Trustee, resident in the State of Florida, to act in the place and stead of the Plaintiff/Counter Defendant, MARJORIE H. ECKARD, with respect to the sale and settlement of said lots; . . .

The appellant did not appeal this order, nor did she file a supersedeas bond to stay the order. Rather, she filed a motion to reconsider and vacate the December 13, 1988 order. The motion was denied in February, 1989.

The appellant then appealed the lower court's denial of her motion for reconsideration to this court. By order of this court, the appeal was limited to the issue of whether the lower court had abused its discretion in denying her Motion to Reconsider, Revise or Vacate the Order of December 13, 1988. The appellant failed to file a brief, however, and we, sua sponte, dismissed the appeal.

Because no supersedeas bond had been filed to stay the order, the appellee filed a Motion for the Appointment of a Trustee to carry out the circuit court's December order. The motion was granted on July 31, 1989. It is from this order that the current appeal arises.

DISCUSSION

Ordinarily, we would address each of the appellant's contentions individually. The appellant's initial two contentions, however, amount to no more than an assertion that the circuit court abused its discretion in appointing a trustee pursuant to the December 1988 order.

As stated above, the December order contained two components that are relevant for our review. The first component directed the appellant "to perform all acts and to execute all documents necessary for the sale and settlement of lots owned by the parties in the State of Florida. . . ." Contrary to the

appellant's assertion, this language is clear and unambiguous. Regardless of whether the "sale" of the Florida lot was to herself by virtue of purchasing 95% of the appellee's one-half share at the appraised value, or to third parties, the order clearly directed the appellant to take some sort of affirmative action toward the sale of the property.

The second component of the order resolved that the court, upon failure of the appellant to comply with the terms of the first component and upon motion of the appellee, would appoint a trustee to act on the appellant's behalf regarding the Florida lot.

The facts clearly indicate that the appellant did not perform as ordered. Furthermore, her appeal to this court on the circuit court's denial of her motion to revise, reconsider or vacate the December order was dismissed by this court for failure to file a brief. Accordingly, regardless of the validity of the order, an issue we were unable to determine because of the dismissal, the circuit court certainly did not abuse its discretion in thereafter appointing a trustee pursuant to its December order.[1]

Finally, the appellant contends that the lower court erred in ordering legal fees and costs to be paid out of the appellant's share of the proceeds from the sale of the Florida lot.

Maryland Rule 1-341 states:

> In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification the court may require the offending party or the attorney advising the conduct or both of them to pay to the adverse

---

[1] We note that we did not reach the merits of the December order, which involved the appointment of a trustee to sell land in Florida. Dismissal of the earlier appeal precluded any discussion of the validity of that order.

> party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees incurred by the adverse party in opposing it.

The circuit court, after a hearing on the issue, found:

> Now, the -- I am finding that the conduct of Mrs. Eckard in defending this proceeding rather than simply indicating that -- and knowing that the purpose of my Order of December was for her to go ahead and get that house sold in Florida, or those houses sold in Florida, was done without substantial justification, and that, therefore, I am ordering up reasonable attorney's fees, and the Courts -- the Appellate Courts, as you well know, are rather loath to let these matters sit. That is their business. They do not have to sit here and go on, month in and month out, and year in and year out with litigants who seem to want to stir the pot.

Thus, the court expressly found that the appellant's conduct in defending the proceeding was without substantial justification. Our query, then, is whether the lower court abused its discretion in making such a finding. Given that the appellant did not properly challenge the order, nor did she comply with the mandate of the order, we hold that the lower court did not abuse its discretion in finding a lack of substantial justification for prolonging the litigation and awarding attorney's fees and costs accordingly.

JUDGMENT AFFIRMED;
COSTS TO BE PAID BY THE APPELLANT.

IN THE CIRCUIT COURT OF THE TWENTIETH
JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

WILLIAM E. ECKARD
Plaintiff

vs Case No. 90-870-CA WCM

MARJORIE H. ECKARD
Defendant

ORDER OF DISMISSAL WITH PREJUDICE

This cause is before the court upon the defendant's motion to dismiss the Amended Complaint on the grounds that the Maryland Court which issued the Order plaintiff seeks to enforce was without subject matter jurisdiction. The court agrees and dismisses this action with prejudice.

It is clear that the objective of the series of orders of the Maryland Court which culminated on July 31, 1989, in the appointment of a trustee to act for the defendant in the sale of her Florida real estate, was to partition said property and divide the proceeds; consequently, said orders constitute, in effect, a partition judgment which is unquestionably in rem. As the courts of Maryland have no in rem jurisdiction over real property in Florida, the series of Maryland orders filed in this cause are not entitled to full faith and credit recognition by a Florida court. Sammons v. Sammons, 479 So.2d 223 (Fla.App. 3 Dist. 1985); Pawlik v. Pawlik, 545 So.2d 506 (Fla.App. 2 Dist. 1989).

DONE AND ORDERED at Fort Myers, Lee County, Florida, this 14th day of February, 1991.

William C. McIver, Circuit Judge
Copies to:
E. Glenn Tucker, Esquire
Karl C. Landsteiner

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

----------X

MARJORIE H. ECKARD,
Plaintiff,

VS.

WILLIAM. E. ECKARD,
Defendant.

CIVIL NO. 86824

----------X

Rockville, Maryland

October 26, 1992

WHEREUPON, proceedings in the above-entitled matter commenced

BEFORE: THE HONORABLE J. JAMES McKENNA, J.

APPEARANCES:

FOR THE PLAINTIFF:

DARREL LONGEST, Esq.
220 N. Adams Street
Rockville, Maryland 20850

FOR THE DEFENDANT:
JOSEPH J. D'ERASMO, Esq.
103 N. Adams Street
Rockville, Maryland 20850

PROCEEDINGS

THE COURT: Good afternoon.

MR. D'ERASMO: Good afternoon, Your Honor. Joseph D'Erasmo for the petitioner, William Eckard.

MR. LONGEST: Darrel Longest on behalf of Mrs. Eckard, who is present. Also with me is my law clerk, Mr. Healy, whom I introduced to the Court two weeks ago.

THE COURT: Thank you.

We have a legal question that has been raised. I have some familiarity with the Eckard case, I think the longest ongoing road show that we have here in the courthouse. There may be some others, but this one is going into its tenth year, as I recollect.

MR. D'ERASMO: Yes, Your Honor. As Your Honor knows, this is a petition to hold this lady, Mrs. Eckard, in contempt of this Court's orders of December 13, 1988, and July 13, 1989, specifically compelling her to perform all acts and to execute all documents necessary for the sale and settlement of two lots in Cape Coral, Florida.

THE COURT: Are these things worth anything?

MR. D'ERASMO: Yes. There was an appraisal attached to the petition for contempt. Apparently, it is the same appraisal attached by Mr. Longest, through his answer, indicating that as of February of 1989, they were worth $78,000. That is Mrs. Eckard's appraiser.

Informally, that same appraiser has advised me that because these lots are waterfront lots, they have a value really right now of approximately $100,000. But I can see we have not gone to the expense of getting a new appraisal.

Those orders--

THE COURT: Well, what do you say to his argument? Essentially, as I understand it, Mr. Longest is saying,

"You can order what you want, if Your Honor please, meaning no disrespect. That court in Florida says a fire on your house. We will not honor that order." What do I do about that, assuming that is the case?

MR. D'ERASMO: You don't have any problem with that, Your Honor. First of all, this is a problem that has been dealt with by the courts before in this state. I am relying not only on the provisions of Maryland Rule 2-648, which specifically permits the Court to sequester and attach property, et cetera, and the provisions of 8-105 of the Family Law Article that says these agreements are specifically enforceable, but more significantly I am relying on the cases of Donegan versus Donegan and Jackson versus Jackson.

This is basically the rationale of those cases and the rationale of the remedy that we are seeking. I would ask Your Honor, I would invite Your Honor's attention to the fact that Mr. Longest's argument only goes to the remedy. We have a way around that problem. I don't think it is a problem to begin with, but I am not going to argue with the Florida court. Let's look at what our own court says in these situations.

There are two appellate court opinions, at least, on this issue, and there is general textural information, all of which I not only cited in the memorandum, but--

THE COURT: Let me ask you this: are all of this court's orders now permanent to the extent that they were never vertically attacked?

MR. D'ERASMO: They were appealed, and your orders were affirmed. Not only were your orders affirmed on appeal, let me be very accurate, anticipating a little detailed difference here.

Your order of December 31, 1988, required her to perform all acts and to execute all documents necessary for the

sale and settlement of these lots. That order was not appealed. Instead what she did, her attorneys did at that time, was to file a motion to revise or vacate that order. That having been denied by Your Honor --

THE COURT: When?

MR. D'ERASMO: It was denied --

THE COURT: A long time ago?

MR. D'ERASMO: -- somewhere between December 13, 1988, when you initiated the initial order, and --

THE COURT: So it is the law of the case.

MR. D'ERASMO: -- February of '89, I believe it was.

THE COURT: It was never appealed.

MR. D'ERASMO: It was never appealed. Then she appealed from the order denying that revision, motion to revise. That order went up on appeal. She was arguing it was an [abuse of] discretion. She failed to file a brief, so the Court dismissed that appeal.

Thereafter, another order was entered, because we were still frustrated with the inability of this lady who was accepting the benefits of this agreement but unwilling to do what she had agreed to do on December 23, 1985. We filed another order in which you again ordered her to carry out all acts necessary for the sale and settlement of these lots.

This time -- and this gets to the question Your Honor just asked -- we tacked on a remedy, indicating that the Court would appoint a trustee resident in the State of Florida to proceed on her behalf. This time we have a different remedy. I don't have to worry about that problem.

How have the courts dealt with this problem before? There have been a number of appellate court decisions. What do you do when a person in the State of Maryland, over whom the

Court has in personam jurisdiction, who had litigated this particular problem of sale and settlement ad nauseam, refused to obey the Court's orders when the property is outside the jurisdiction of the Court?

The Court, in Donegan versus Donegan, which we cite in our memo, said as follows -- and I will only read one portion of this. I will read the whole thing, but I do not want to bore the Court with it. Here is the general rule. "It is generally held that by virtue of its power over a person properly before it" --which is clearly the case here. The Court has had Eckard cases by the gross. There have been at least two other lawsuits filed in this court against attorneys representing Mrs. Eckard, as well as the constant litigation in this thing -- "It is generally held that by virtue of its power over a person properly before it, a court of equity may compel him to act in relation to property not within the jurisdiction as it could in relation to property within the jurisdiction, but that as decrees do not operate directly on the property nor affect the title, but are only made effectual by directing some action on his part, such as the execution of conveyances or the execution or cancellation of other instruments or writings."

What we have asked the Court to do here -- let's forget about Carl Landstein or the trustee that was appointed in Florida -- I have asked the Court in this petition for contempt to have Mrs. Eckard carry out this Court's orders by executing the limited power of attorney to Mr. Eckard for the sale of this property in Cape Coral, Florida. That is completely consistent with the Donegan case.

In addition to that -- and the Court in that case, incidently, that case involved Minnesota Mining property, the Court required, in order to enforce the husband's obligations in that case, the Court required him to assign an interest in

Minnesota Mining property, which he appealed and which was upheld by the Court of Appeals.

In Jackson, which is another case that is very similar to this case, Mrs. Jackson refused to carry out her agreement to proceed with the conveyance of lots to her husband in Florida. What did the Court do there? The Court directed the husband not to make any further alimony payments until she went ahead and conveyed the title.

Now, what we are asking the Court to do here is have Mrs. Eckard execute this limited power of attorney. I think it is fair and equitable and it is just that if she refuses to do that forthwith after all these years of litigation, then why should she be permitted to continue to reap the benefits of her agreement, naming getting the approximately $2,000 a month she gets out of Mr. Eckard's civil service retirement pension money he would rather have.

If she refuses to execute that limited power of attorney, which is clearly within the in personam jurisdiction of this Court, then our request is that she be ordered to endorse those checks over until such time as the amount of money paid over to Mr. Eckard equals 95 percent of one-half of the fair market value of that property, plus the legal fees he has been trying to get, and which your Honor actually ordered and it was affirmed by the Court of Special Appeals in this case earlier.

How long and what does it take to vindicate the orders of this Court? That is exactly where we are. I don't have any problem with this question of what the Florida courts do. Number one, our courts have the right to enforce their decrees with the persons in front of them. If there is a problem with what Your Honor does in response to this petition for contempt and the order to show cause, if Your Honor chooses to do it in accordance with the request made by us, we will worry about that

problem in the State of Florida.

I think in the State of Maryland, based on the case law, based on Maryland Rule 2-648, based on the Family Law Article, based on this Court's decrees which have been affirmed by the Court of Special Appeals, we have every right to ask for this relief. It is long overdue, and that is where we are with this.

* * * *

[MR. LONGEST] What Donegan says -- I have shepardized Donegan, by the way, Your Honor. It is still the current law in this state, and it comes out of a Supreme Court opinion, which I have also attached to my pleadings as Exhibit G, I believe it is, Fall versus Easton. It says that full faith and credit clauses do not apply to actions which affect title to property in foreign jurisdictions.

They say right here in the Donegan case that, "In the case before us, the orders of the Court, affirmative and negative," which we certainly have insofar as your orders are concerned -- and by the way, let me preamble this. You were absolutely correct. If you notice the very first paragraph of the rely I gave, we hope this is the last visit that this Court has to make to this. We are not here on a frivolous issue. We are not here to flaunt the Court or to slap the Court.

I will say right up front, we are here to say that the Court did not have jurisdiction to do what it did. I say that respectfully. I think the Court knows that I do not mean any disrespect. But, unfortunately, nobody has heretofore -- and I have read every transcript of every proceeding that was before and anybody else -- nobody has ever brought to your attention the fact that you were being asked to set up orders that, A, you did not have the jurisdiction to do because of the existence of the Florida law, and B, that did not comply with the jurisdiction which has been invoked by Donegan.

* * * *

MR. LONGEST: I will tell you why we are here. He will not agree to sell it to her without her agreeing out of the proceeds of the sale to pay these costs, fees, and expenses that have been previously raised and ordered.

And her position -- and I think well taken in both the Donegan and Jackson matter. I want to address Jackson in just a second, because he misread Jackson, too -- is that this Court did not have the authority, did not have the jurisdiction, to order up the appointment of a trustee. It did not have the authority to order her to sign documents with regard to conveyance. It did not have the authority to do any of those things, because this is a [rem] action affecting title in Florida that you were trying to compel her to do in a civil matter.

The Court in Donegan says that it depends on the law in the other jurisdiction. The Court in Jackson --

THE COURT: Let me take a look at Donegan. Hold on just a second, because I think that is important.

MR. LONGEST: Page 523 is the --

THE COURT: Well, I am looking at it right now. (Examining document.)

I am looking to see what -- I see what you claim to be the holding in the case, but it does not help me much. You have underscored this language.

MR. LONGEST: When you combine --

THE COURT: Hold on a minute now. "In the case before us the orders of the Court, affirmative and negative, may be enforced by contempt proceedings." Okay, so far. "If the husband executes this assignment," meaning pursuant to a contempt proceeding, "it is generally held that its validity would be recognized elsewhere, even though the execution had been coerced."

Now, that language, that very language, tends to obviate your argument that I lacked jurisdiction. Because if there is no jurisdiction, then there would be no need for the Court of Appeals to even write that kind of stuff, right?

MR. LONGEST: Well, if you read the next two sentences, I think you will find out --

THE COURT: I am going to read the next two sentences. "If he refuses to execute the assignment, the Maryland decree may or may not be enforced in Minnesota as the authorities above reveal." Now that is fine, and that is what we are apparently faced with here.

You say Florida -- I don't know what Florida would do in situation A if she were to assign, under threat of being sent to jail, if she were to assign whatever these papers are that he wishes to have assigned.

MR. D'ERASMO: It is a limited power of attorney. That is all it is.

THE COURT: Limited power of attorney. Then she could tell the Florida court, "Well, I was forced to do that." I don't know what Florida would do about that. I mean, this Court seems to say that -- it says, "It is generally held that its validity would be recognized elsewhere, even though the execution had been coerced." And that coercion that they are talking about there is coercion by way of a contempt proceeding, or a contempt finding.

MR. LONGEST: That's correct.

THE COURT: Then the next sentence, "If he refused to execute, the Maryland decree may or may not be enforced in Minnesota, as the authorities above reveal." We now know, at least you tell us and I am prepared to accept it, that Florida will not accept any order that I sign.

MR. LONGEST: I have given you a copy of the

order.

THE COURT: Fine. I accept that. Now, it would seem to depend on the policy and procedures of the other state, and there is an increasing tendency to enforce, et cetera.

What I am saying to you is, Mr. Longest, that does not tell me, at least that snippet of this opinion does not tell me, what rights I have, assuming that I have jurisdiction to begin with. You say I don't, but apparently this Court seems to feel that there are situations in which a Court, a Chancellor, can have jurisdiction in an in rem proceeding, vis-a-vis property in another state, in this case in Minnesota.

What can I do if I say to her, "Madame, I want you to sign a limited power of attorney," and she says, "Forget it. I am not going to do it." What then can this Court do, not so much vis-a-vis the property, but vis-a-vis Mrs. Eckard. That does not say here. That is silent on that point.

MR. LONGEST: I would like to answer your question. Then I want to tell you why Donegan is at issue.

The answer is: I don't think you can do anything, and I will tell you why in just a second. That is the direct answer to your question.

THE COURT: But you are basing that on the question of whether or not I had jurisdiction to begin with. Let's assume for purposes of argument that I have jurisdiction, and let's assume that I am going to ultimately read this case essentially as saying that a Maryland court can have, if it has in personam jurisdiction over the person, can order that person to do certain things with regard to property that is in another state, regardless of whether or not the other state agrees with what is going on, which is certainly what this opinion seems to be looking like.

MR. LONGEST: Judge, when you read the

opinion, it does not say that at all. In fact, Judge, the reason --

THE COURT: I just read the -- you are the one who cited me the language. You said, "Please read the language," and I have just read the language.

MR. LONGEST: And it is clear in this case that when they looked at the law in the State of Minnesota, because the decree could be enforced there, therefore the action that had been taken by the Maryland court was affirmed, the Circuit Court was affirmed. But they clearly say that it depends on the law in the foreign jurisdiction. They clearly say that.

THE COURT: What depends on the law? Do you mean the jurisdiction of this Court depends on the law in the foreign jurisdiction?

MR. LONGEST: Judge, it is not an in personam jurisdiction issue, and it is not a contempt issue.

THE COURT: It is a jurisdiction issue.

MR. LONGEST: It is a jurisdictional issue.

THE COURT: I understand that. But what I think you just said is that if it were the case that Florida, in the case of Eckard v. Eckard, were to say, "Yes, we will honor whatever order you sign, Judge McKenna," then I have jurisdiction. Did you not just say that, in effect?

MR. LONGEST: You would have had the ability to affect foreign in rem title to the property by virtue of the order appointing a trustee. We have to segment the three issues that are involved.

THE COURT: Yes.

MR. LONGEST: You ordered that a trustee be appointed because she would not sign. That was the remedy that was chosen.

THE COURT: And what you are saying in effect is --

MR. LONGEST: I am saying the Florida court says --

THE COURT: You are saying that the Florida court either can bestow jurisdiction on me or not, as it sees fit.

MR. LONGEST: Only as it affects the rem.

THE COURT: Well, as it affects the rem. And I am telling you that that is an enormously [skewed] view of what the Court of Appeals has said in this case, that it is the foreign jurisdiction that dictates whether or not there is jurisdiction over the property.

MR. LONGEST: It is not a skewed view at all if you look at Fall v. Easton, which is also attached as an exhibit. If you look at Fall v. Easton, which is the Supreme Court opinion --

THE COURT: Well, let me --

MR. LONGEST: -- you find that it is not --

MR. D'ERASMO: That supports our position, Fall versus Easton.

MR. LONGEST: I simply paused because he was reading.

THE COURT: Go ahead.

MR. LONGEST: If you look at the basis for the opinion in Fall v. Easton, which I have also shepardized and it is still good law, you will find out --

THE COURT: Well, do you have that here? Have you given --

MR. LONGEST: Yes, I gave you a copy of that. It is Exhibit Number --

THE COURT: Well, I want to read Donegan.

MR. D'ERASMO: Fall v. Easton is quoted in Donegan, and it is quoted to support the position that "the Court of Equity, having jurisdiction in personam, has power to require

a defendant to do or to refrain from doing anything beyond the limits of its territorial jurisdiction, which it might have required to be done or omitted within the limits of such territory."

THE COURT: Let me just --

MR. LONGEST: But you have --

MR. D'ERASMO: So it supports us.

THE COURT: Hold on, gentlemen. Gentlemen, stop.

* * * *

THE COURT: All right. Let me go on here. It goes on --the rule has been recognized in divorce cases, citing a California case, an Iowa case, a Wisconsin case, and then a New Jersey case. "The Circuit Court," meaning, I believe, in Donegan, "having jurisdiction in personam over the husband could, if the iron mine were in Maryland or the payor of the royalties in Maryland, place a lien on the mine and enjoin him for alienating his property, that is, his rights to payments of royalties as they accrue, and require him to assign so much therefrom as would be required to meet the amounts ordered by the Court. The Court could enforce its order under the provisions of code from giving the citation by means of contempt, sequestration, execution, and attachment. In the case before it, the orders of the Court, affirmative and negative, may be enforced by contempt proceedings."

What is going on in Donegan? They are talking about a matter that is in a foreign jurisdiction in Minnesota. You say it makes a difference because it was not a piece of property, but rather it was rights involving a piece of property. I say that is a difference without a distinction, and you will have to live with that, Mr. Longest, because that is what my finding is in connection with it.

"If the husband executes the assignment, it is generally held that its validity would be recognized elsewhere, even though

the execution had been coerced." We have already gone over this, and we don't know what Florida would do in that instance.

"If he refuses to execute the assignment, the Maryland decree may or may not be enforced in Minnesota, as the authorities above revealed." This is all essentially, in my view, closer to dictum than you say it is the holding. I mean, the Court, Judge Hammond, is theorizing on what might happen if you have -- if A happens, that might occur; if B happens, that might occur. To me that is more dictum than it is a holding in the case.

"It would seem to depend on the policy and procedures of the other state, and there is increasing tendency to enforce." The thing that depends on the policy and procedures of the other state is what the other state is going to do in terms of an order of the Maryland court. It does not in any way say that the tail is going to wag the dog, that the other state is going to dictate whether or not this Court has jurisdiction. I don't even understand how you could reasonably say that.

Then finally it say[s], "There is some indication Minnesota would do so." Now, Mr. Longest --

MR. LONGEST: If I may explain to you why I think so, it is because I have read these other cases that have been cited. I have given you a copy of Fall v. Easton, which is at tab number G at page six.

THE COURT: All right. This is going to be the last step I am going to take with you on this, Mr. Longest, because so far you are batting zero. Tab what?

MR. LONGEST: Tab G.

THE COURT: (Examining document.) All right.

MR. LONGEST: If you look at page six and page seven, you will find out what was happening in the case of Fall v. Easton. On page six they say, and I quote, "In the instant case, if Fall had obeyed the order of the Washington court and made

a deed of conveyance to his wife of the Nebraska land" --

THE COURT: Let me get on the same wavelength as you. I have page six. Where?

MR. LONGEST: Starting from the first paragraph.

THE COURT: "We think there can be no doubt"?

MR. LONGEST: Yes. If you read that sentence, then you go to the next sentence.

THE COURT: Let's not skip over that sentence, because it is an important one.

MR. LONGEST: I agree. It is a very important sentence, because they say clearly that if Fall had obeyed the order of the Washington court and made a deed, even under threat of contempt proceedings or after duress by imprisonment, the title thereby conveyed to Mrs. Fall would have been of equal weight and dignity with that which he himself possessed at the time of the execution of the deed.

THE COURT: All right.

MR. LONGEST: Then it goes on. But Fall, not having executed the deed, the Court's conclusion was, to quote its language "that neither the decree nor the commissioner's deed can bring any right or title upon her. This conclusion was deduced not only from the absence of power generally of the courts of one state over land situate in another, but also from the laws of Nebraska, providing for the disposition of real estate in divorce proceedings."

THE COURT: All right.

MR. LONGEST: Now, the holding --

THE COURT: All this is citing to the Washington court.

MR. LONGEST: And it is going to page seven. It leads up to page seven --

THE COURT: All right.

MR. LONGEST: -- where they quote further. "The decree is inoperative to effect the title to the Nebraska land and is given no binding force or effect so far as the courts of this state are concerned by the provisions of the Constitution of the United States with reference to full faith and credit. Since the decree upon which the plaintiff bases her right to recover did not affect the title to the land" --

THE COURT: Wait a minute. I got distracted there for a moment.

MR. LONGEST: Page seven.

THE COURT: I am on page seven.

MR. LONGEST: The first paragraph.

THE COURT: "Afterwards in the contest arising between the parties"?

MR. LONGEST: No, sir, that is not the first paragraph. The first paragraph starts with "The decree is inoperative"--

THE COURT: All right.

MR. LONGEST: -- "to effect the title to the Nebraska land and is given no binding force or effect so far as the courts of this state are concerned by the provisions of the Constitution of the United States with reference to full faith and credit." Now, that is a Nebraska court talking, and it is being quoted by the Supreme Court as the reasons why they were not going to divest Mr. Fall of his interest in the real estate.

THE COURT: No, no, no.

MR. D'ERASMO: There is a very simple and important distinction there. It is obviously not --

THE COURT: That is not what they were saying at all. That is not what they were saying, Mr. Longest. What they are saying is that the court, the foreign jurisdiction, can ignore,

if they so choose, the decree of the Washington court. That's all.

MR. LONGEST: That's right.

THE COURT: That is all that is saying, and that is essentially what we have been saying here since we started, that it is entirely up to Florida. If I want to pass a decree here, vis-a-vis that property, which I have already done --

MR. LONGEST: And they have rejected.

THE COURT: -- and they have ignored it --but you are telling me that because they ignored it, I don't have jurisdiction. That is what you told me during one point during your argument.

MR. LONGEST: Judge, I --

THE COURT: Mr. Longest, I am really getting a little tired of this. I am trying to do the best I can to follow your reasoning, but your reasoning is going all over the lot.

What they simply said in this case that you have read so far is that, applying it to our case, that Florida can say, "To heck with you, Judge McKenna. We're going to disregard your order." And you said they have done that.

MR. LONGEST: The lower courts have done so.

THE COURT: Fine. But that still begs the question of whether or not I still can do anything with regard to that lady to force her to put the property in a position where Florida court could then have the second choice that the Maryland courts are talking about, and that is they have a coerced -- remember that word, coerced -- a coerced limited power of attorney.

It in no way questions the jurisdictional base that I may or may not have. Nothing that I have read anywhere in here has indicated to me that either that I have no jurisdictional base whatsoever -- in fact, Fall versus Easton seems to say that I do have it. I mean, if it were to say that there is no jurisdiction at all

in the Washington court with regard to the property in the other place, why don't they say it? And why are you not able to tell me that there is no jurisdiction? Point it out to me. Where does it say in here, in Fall versus Easton, that the Washington court had no jurisdiction over, I think it was, the Nebraska -- I mean, had no jurisdiction over the individuals. Where does it say that?

MR. D'ERASMO: In personam jurisdiction. Exactly.

THE COURT: And cannot say anything about property. Tell me where it says that.

MR. LONGEST: Well, Your Honor, it goes to the second half of the issue and that has to do with the remedies that are involved. If you have --

THE COURT: That is exactly what Mr. D'Erasmo said, I think, the very first two or three sentences that he said when he stood up; that what you are arguing about is a question of remedies. And let us decide what we are going to do about the remedies.

That begs the question of whether or not I have the jurisdiction to say to this lady, "Madame, I am ordering you to sign a limited power of attorney with regard to that property." Then she has to decide whether or not she is going to obey that order.

If she decides that she will not obey that order, then she has to face the consequences of that action, which might very well be a direct contempt of this Court and might very well wind up with her not leaving through these doors, but leaving through that door over there under the auspices of the sheriff.

So that is where we have come, Mr. Longest. Everything that you have cited so far and everything that I have read so far stands clearly. It is as if they wrote a bright line in connection with this to give us a path. And you seem to be saying something entirely opposite to that.

MR. LONGEST: All I am saying is -- and I point this out in cases that I have cited on page eight of my memorandum -- that in situations where a party is seeking the enforcement of some contract by forcing the sale of property in another jurisdiction that will not recognize the effects of this Court's ruling, that if you look at the law set out in developments of the law under injunctions at 78 Harvard Law Review, the courts have generally denied the equitable remedy, which is sought here by Mr. Eckard.

THE COURT: I just read--

MR. LONGEST: They lead the parties to the legal remedies-- THE COURT: Mr. Longest, with all due respect to the Harvard Law Review, I have just read what apparently is the leading case. You told me yourself that you have shepardized it in Maryland. I mean, it is solid law. I have read it, and I have come to an entirely opposite conclusion to what that case stands for than you do. And I am quite confident that I am absolutely correct and that you absolutely incorrect.

Now, that is item number item. Then you talk about the Fall versus Easton case. I have looked at that case, and in no way does it stand for the proposition that you are telling me that it stands for.

Now you are telling me that some other writers have -- I assume Fall versus Easton has not been overruled by the Supreme Court, has it?

MR. LONGEST: No.

THE COURT: That is the law.

MR. LONGEST: That is the basis upon which Florida has acted.

THE COURT: All right. Florida can do whatever it wishes. That is their business. If they want to protect their property owners or do whatever they can, that is their business.

But if you are telling me that basically somehow or other they, Florida, can tell me whether or not I have jurisdiction over this lady, I reject that argument out of hand. Absolutely, positively reject it out of hand.

MR. LONGEST: The issue is a contempt issue with regard to what to do or not to do.

THE COURT: Indeed.

MR. LONGEST: Because the fact is that there has been an order passed that had no ability to be enforced through the appointment of a trustee.

THE COURT: That is a remedy issue again. It does not say that I do not have jurisdiction over--I clearly have problems with whether or not I have in rem jurisdiction over that Florida property. That is a whole different ballgame. But I have jurisdiction over this lady, and I can tell her what I feel she can or cannot do.

MR. LONGEST: Judge, I don't deny that.

THE COURT: All right. I have had enough.

MR. LONGEST: I really have not tried to deny that.

THE COURT: I have heard enough. I have heard absolutely more than I am going to hear on this, Mr. Longest. You may have a seat. Thank you.

Mr. D'Erasmo, I am going to be granting your motion. I find that -- I do not know that I have to, at this stage, go so far as to find this lady to be in contempt of this court; however, I am specifically finding that I do have jurisdiction over her, over her person; that I can sign orders with regard to the property in Florida, even though I may or may not have in rem jurisdiction over that property; that I will sign, if you will prepare for me, a document for a limited power of attorney.

MR. D'ERASMO: I have prepared a proposed order

for a limited power of attorney for the sale of real property, attached it to the petition for contempt.

THE COURT: All right.

MR. D'ERASMO: The only thing that it does not--I will give Your Honor a copy of it. I have already provided it to Mr. Longest. The only thing that is missing from this order is, pursuant to the earlier January 31, 1989 order, we had requested legal fees in obtaining these orders. The Court of Special Appeals had affirmed your decision that we could get legal fees for the services rendered in attempting to get these orders to carry our Mrs. Eckard's agreement.

THE COURT: Here is what is going to happen.

MR. D'ERASMO: Let me give you the order.

THE COURT: Wait a minute, Mr. D'Erasmo. This is what I am going to do. I have no idea. Mrs. Eckard has resisted and resisted and resisted in connection with it to the tune of hundreds--well, at least 138 docket entries that I count here in connection with this miserable piece of property there in Florida.

I am not going to buy into this business of ordering her to endorse her checks over on a monthly basis, because I am not going to countenance monthly court appearance -- I am just not going to do it. I am going to be ordering that this lady--and I am going to give you until Friday of this week, ma'am to make up your mind whether you want to defy me or not defy me -- I am going to give you until Friday of this week to decide a limited power of attorney. You can write under protest or anything you want in connection with it.

If you will not sign it, I will give you until Thursday, close of business Thursday. That will be 5:00 p.m. Thursday, the 29th of October. Then I will set the matter. If it gets signed, there will be no reason to appear back here in court. If you decide that you will not sign it, then I want all of you back here on Friday

morning, the 30th. And I will have to decide about what I am going to do about what I perceive to be -- I will tell you, I will not have any difficulty in perceiving it to be a direct contemptuous act of this court with regard to this property.

So I will give you a little time, a little breathing space, in order for you to make up your mind.

THE CLERK: Do you want to set for a certain time, Your Honor?

THE COURT: Ten o'clock. It will be ten o'clock, if it need to, on this Friday. Do you have it?

And further, as to any of the court orders with regard to the amounts of money that are owed to your client, Mr. D'Erasmo, that money will be taken out of the proceeds of the sale of the Florida property when that occurs, out of her share of it.

MR. D'ERASMO: I have the form of the limited power of attorney. It has been served on Mrs. Eckard and Mr. Longest, and the Court has it in the petition for contempt.

MR. LONGEST: It was not served on me, Your Honor. I got a copy through looking at the court file.

MR. D'ERASMO: No. I have the registered mail receipt from your office and from Mr. Eckard.

MR. LONGEST: I have a copy of it now.

THE COURT: He can hand it to you.

MR. LONGEST: I have a copy of it.

THE COURT: All right. You have a copy of it. So you have four days to make up your minds. The moment of reckoning is upon us. Thank you.

We will stand in recess.

THE CLERK: All rise. Court stands in recess.

(Whereupon, the hearing was concluded.)

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

----------X

MARJORIE H. ECKARD,
Plaintiff,

VS. : CIVIL NO. 86824

WILLIAM. E. ECKARD,
Defendant.

----------X

HEARING

Rockville, Maryland October 30, 1992

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

----------X

MARJORIE H. ECKARD,
Plaintiff,

VS. : CIVIL NO. 86824

WILLIAM. E. ECKARD,
Defendant.

----------X

Rockville, Maryland

October 30, 1992

WHEREUPON, proceedings in the above-entitled matter commenced

BEFORE: THE HONORABLE J. JAMES McKENNA, Judge

APPEARANCES:

FOR THE PLAINTIFF:

DARREL LONGEST, Esq.
220 N. Adams Street
Rockville, Maryland 20850

FOR THE DEFENDANT:
JOSEPH J. D'ERASMO, Esq.
103 N. Adams Street
Rockville, Maryland 20850

PROCEEDINGS

THE COURT: Good morning, everybody. Are there any preliminary matters?

MR. D'ERASMO: Joseph D'Erasmo in the case of Eckard versus Eckard, which is not on your docket. It was scheduled today.

THE COURT: Did she sign?

MR. D'ERASMO: She has not. Darrel Longest is here. May I find -- I just want to find out what we are doing with this before you get started on your docket, if I might.

THE COURT: All right. It is a pretty simple issue.

MR. D'ERASMO: I see it that way. Here he is now.

THE COURT: Mr. Longest?

MR. LONGEST: Yes, Your Honor.

THE COURT: Mr. D'Erasmo has come forward in the Eckard matter as a preliminary matter. There is only one issue before me this morning. Did your client sign the document that I ordered her to sign?

MR. LONGEST: No, sir.

THE COURT: All right, fine. Where is she?

MR. LONGEST: She is on her way to the courthouse. I spoke with her last night --

THE COURT: All right. Get the sheriffs.

MR. LONGEST: -- as late as 7:30.

THE COURT: Thank you. She will be escorted with the sheriffs when we get --

MR. LONGEST: Your Honor, at the time, before that occurs, I would appreciate a short opportunity to put something on the record concerning her medical condition--

THE COURT: You may indeed. We will hope that--

MR. LONGEST: --and the reasons why I think she should not be incarcerated.

THE COURT: We will hope that the Montgomery County Detention Center will be able to take care of her.

MR. LONGEST: Thank you.

THE COURT: Thank you.

THE CLERK: Your Honor, may I have the number on that case? I don't have that on my docket.

THE COURT: It is right here, 86824.

THE CLERK: Thank you.

THE COURT: Are there any other preliminary matters? All right. Let's get started.

(Whereupon, the hearing was recessed to reconvene at a later time.)

THE CLERK: Civil 86824; Eckard v. Eckard.

MR. LONGEST: Darrel Longest for Mrs. Eckard, who is present.

MR. D'ERASMO: Joseph D'Erasmo for the petitioner, Mr. Eckard.

THE COURT: Now, we met last in this matter -- I don't have a totally clear recollection of what happened, but you can fill me in if I make any mistakes. The matter was in a posture that we were discussing in this ongoing former matrimonial dispute, which is now going, I think it is, into its tenth year, the question of a piece of property in Florida. It boiled down to in our last meeting a question of my ordering Mrs. Eckard, under pain of being held in contempt of this Court, to sign a document that you had prepared --

MR. D'ERASMO: That is correct, Your Honor.

THE COURT: -- vis a vis the sale of that document.

MR. D'ERASMO: That is correct.

THE COURT: Now, we met when? I have forgotten when. Was it this week?

MR. D'ERASMO: We met on Monday of this past week.

THE COURT: Monday of this week, this being Friday. So that was Monday, the 26th. I gave Mrs. Eckard until today, Friday, the 30th, to simply --

MR. D'ERASMO: Execute the limited power of attorney.

THE COURT: -- execute the limited power of attorney. Has that been done.

MR. D'ERASMO: It has not been done.

THE COURT: All right. Mr. Longest, I will hear from you.

MR. LONGEST: Thank you. Your Honor, the relief prayed for in this motion, as found in the order that they submitted along with it, that asked that she be judged in contempt of your order of December 13, 1988, and July 31, 1989, that she be ordered to execute a power of attorney to Mr. Eckard, the form of which I have here in my hand.

THE COURT: Yes. That was all done. That is the history of this thing. But as of Monday, I think that the issue got to be fairly clear, because as of Monday of this week, I ordered from this seat that I am sitting in that lady to your left to sign that document. And I gave her time. I did not want to force her to have to make up her mind within an hour. But I gave her until Friday, four or five days, in order to let it sink in that I was ordering her to sign that document.

MR. LONGEST: She understands that.

THE COURT: She has not done so.

MR. LONGEST: She understands that.

THE COURT: Now, I will hear from you on why I ought not to put her in jail right now.

MR. LONGEST: Well, if I may continue.

THE COURT: For contempt of court.

MR. LONGEST: The third item that they requested is in paragraph three. They say that "in the event the respondent fails to execute such power of attorney within five days of the date of this order" -- although the order has not been signed, you did say from the bench on Monday that she should sign it -- "she shall forfeit and pay into the registry of the court to the benefit of William E. Eckard all sums she receives as her share of the Civil Service retirement pension payable to her under the parties' agreement of December 23, 1985, until such time as she complies with this order."

So I have two things that I want to bring to the Court's attention. One has to do with the merits of whether she should in fact go to jail. The other has to do with the due process issue of whether or not the show cause order that brought her here to being with is sufficient such that she might find herself subject to contempt powers that you clearly have.

Having been given notice in the Court's show cause order signed by Judge Messitte that the relief that they were looking for in the alternative to her signing was a forfeiture of monies. I think that she would be denied due process if put in jail for the fact that she did not sign off on that. That was not one of the remedies that had been requested and that was noted in their petition.

THE COURT: Are you forgetting what happened on Monday of this week, Mr. Longest?

[MR. LONGEST]: Not at all, Your Honor.

THE COURT: Was it any way unclear in what I ordered?

MR. LONGEST: You did.

THE COURT: I mean, did I not use simple declarative sentences?

MR. LONGEST: You did.

THE COURT: I thought I had, but may[be] I didn't. Maybe I was unclear in some fashion.

MR. LONGEST: Judge, I am not arguing with you; you did.

THE COURT: All right.

MR. LONGEST: I understood it; my client understands it. I have counseled with my client extensively throughout the week.

THE COURT: And she has decided what? I am going to ask her to tell me whether or not she is going to sign that document.

MR. LONGEST: She has decided that she cannot sign the limited power of attorney, because if she does so, it would be under coercion. If she does so, she will give up rights to a [partition] suit in the State of Florida, which is where she believes, and I believe, this matter should be litigated as to whether or not she has the rights of first refusal to buy the Florida property.

THE COURT: All right.

MR. LONGEST: That seems to be the appropriate--

THE COURT: Mrs. Eckard, do you want to stand up, please?

What is your full name?

MRS. ECKARD: Marjorie H. Eckard.

THE COURT: You were here, were you not, on Monday of this week when we had another hearing in a series of hearings in connection with the matter.

MRS. ECKARD: Yes, sir.

THE COURT: You heard me tell you directly, face to face, that I was ordering you to sign that document, did you not?

MRS. ECKARD: Yes, I heard you, and I understood you clearly.

THE COURT: You understood me clearly.

MRS. ECKARD: Yes.

THE COURT: And you decided, for whatever your reasons, that you refuse to sign that document, is that correct?

MRS. ECKARD: May I state one reason?

THE COURT: You may state whatever you wish, but I want to know whether or not you are telling me that you are refusing to obey my order to sign that document.

MRS. ECKARD: I will refuse to sign a power of attorney to my ex-husband hatchetman. I will not sign a power of attorney to an ex-spouse.

THE COURT: I see. All right, fine.

MRS. ECKARD: For very good reasons.

THE COURT: All right, ma'am. Whatever your reasons may be, I find you to be in contempt of this court. I am ordering you now to be taken to the Montgomery County Detention Center for a period of at least 120 days as of this juncture. You can relieve yourself from staying in the Montgomery County Detention Center at any time by simply signing that document.

Mr. D'Erasmo, will you leave with this lady, so she can put it in her purse, a copy of that, which signing a copy of that will be sufficient?

MR. D'ERASMO: Yes, sir.

THE COURT: You can notify, if you choose to do so, your lawyer or anyone else about it. As soon as you sign

that document, you will be released from the Montgomery County Detention Center.

Thank you, ma'am.

Sheriff, take the prisoner.

MR. LONGEST: Your Honor, I did not get the opportunity to address the issues of her health. I thought you said--

THE COURT: All right, fine. Tell me about her health.

MR. LONGEST: This lady suffers now from a sublaxated cervical vertebra fracture as a result of being hit in 1991 by a lumber truck. She suffers from continuing degenerative arthritis. You can look at her hands and tell that. It is a very painful condition.

She has deteriorated disks in her lower back. She suffers from clinical depression. She is on Ritalin for that clinical depression and under the care of Dr. Kelly, a psychiatrist, and has been for many years under his care.

She suffers from interstitial cystitis, which, although there appears to be no cure, is quite uncomfortable to her and keeps her close to home. She suffers from a diagnosed condition of Raynaud's disease, and she suffers currently from a ruptured bursa on the left hip.

We think these are the things the Court should consider before it puts her in jail.

THE COURT: I have considered them, and my mind is still the same. You should let the Montgomery County Detention Center know about these things. She is not unprepared.

All right, fine. Take the prisoner.

MR. LONGEST: Thank you, Your Honor. Have a good day.

MR. D'ERASMO: May we be excused?
THE COURT: Yes, indeed. Thank you very much.
(Whereupon, the hearing was concluded.)

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY,

MARYLAND

IN RE THE MATTER OF MARJORIE H. ECKARD	:	Misc. Petition No.: 8763
FOR THE ISSUANCE OF A WRIT OF HABEAS CORPUS	:	

ORDER FOR A WRIT OF HABEAS CORPUS

ORDERED this 5th day of November, 1992, on the foregoing petition, by the Circuit Court for Montgomery County, Maryland, that the writ of Habeas Corpus issue in this case as prayed, and that the same be made returnable at 10 o'clock on the 9th day of November, in the present year, before me, The Honorable Ann S. Harring, Judge, Circuit Court for Montgomery County, Maryland.

Paul H. Weinstein
Judge, Circuit Court for
Montgomery
County, Maryland

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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MARJORIE H. ECKARD,
Plaintiff,

VS. : CIVIL NO. 86824

WILLIAM. E. ECKARD,
Defendant.

----------X

HEARING

Rockville, Maryland November 9, 1992

BEFORE: THE HONORABLE PAUL H. WEINSTEIN, Judge

PROCEEDINGS

THE CLERK: Equity 86824 and Miscellaneous Petition 8763 in regards to Eckard.

THE COURT: Are you Marjorie Eckard?

MS. ECKARD: Yes, Your Honor. I am.

THE COURT: Mrs. Eckhard I have a petition her in the nature of a habeas corpus.

MS. ECKARD: Yes, sir.

THE COURT: Filed by Mr. Longest on your behalf, pursuant to an order of Judge McKenna.

MS. ECKARD: Yes.

THE COURT: I am going to change that order as follows: I am going to lift the jail sentence, and I am going to place you on a $1,000 personal bond. That personal bond will remain in effect until the outcome of the appeal which has been filed on your behalf by Mr. Longest; or alternatively, until such time as another action may be filed in the State of Florida to resolve this case.

MR. LONGEST: Thank you very much, Your Honor.

MS. ECKARD: Thank you very much. I appreciate that, Your Honor.

THE COURT: You have to take her back downstairs.

VOICE: Yes, Your Honor.

VOICE: Yes, sir.

THE COURT: Ma'am they will release you from downstairs and Mr. Longest will meet you. You have to sign a bond.

MS. ECKARD: Ok. I do?

THE COURT: Yes.

MRS. ECKARD: All right, fine. Okay.

MR. LONGEST: Thank you, Your Honor.

MS. ECKARD: All right. Thank you.

VOICE: Thank you for your time, Your Honor. (Whereupon, the hearing was concluded.)

IN THE COURT OF APPEALS OF MARYLAND

No. 49

September Term, 1993

MARJORIE H. ECKARD

V.

WILLIAM E. ECKARD

Argued before MURPHY, C.J., ELDRIDGE, RODOWSKY *MCAULIFFE, CHASANOW, KARWACKI, AND ROBERT M. BELL,

Opinion by Rodowsky, J.

Eldridge, J. concurs in the result only.

Filed: January 18, 1994

(Reconsideration denied March 4, 1994.)

*McAuliffe, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

This appeal is from a civil contempt order issued in a divorce action that began in December 1983. The Circuit Court for Montgomery County ordered the appellant, Marjorie H. Eckard (Marjorie), to sign a power of attorney authorizing her former husband, William E. Eckard (William), to execute in Marjorie's name and on her behalf the documents necessary for the sale and conveyance of two adjacent, unimproved lots in the City of Cape Coral, Florida. When Marjorie refused to do so she was imprisoned for contempt until released, pending the outcome of this appeal, on a writ of habeas corpus. Marjorie's principal contention is that the Maryland court had no jurisdiction to enter an order affecting the title to realty lying outside of Maryland. As we shall see below, for more than 200 years, courts of equity have issued, enforceable by contempt, the type of order presented here.

Marjorie initiated the action, asserting claims, inter alia, for divorce *a mensa et thoro*, for temporary and permanent alimony, for a monetary award based on the identification and valuation of marital property, and for counsel fees. William counterclaimed for divorce *a vinculo*. A decree of absolute divorce was entered in June 1985 under which the other claims in the action were reserved for future determination, and those claims were referred to a master.[1]

The matter was heard before a master on December 23, 1985. The parties, and their attorneys, were present. Counsel for Marjorie announced that the parties had reached an agreement,

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[1] By Md. Code (1984, 1991 Repl. Vol.), S 8-213 (b) of the Family Law Article, "[a]ny decree of ... limited or absolute divorce in which the court reserves any power under (subtitle two] is final and subject to appeal in all other respects."

resolving all of the open legal issues between them, the terms of which he then orally explained for the record. The Florida land "will be sold by the husband, and the net proceeds divided equally, unless the wife chooses to buy the husband's one-half, which she may do prior to his selling it." Counsel explained that William "has agreed that if [Marjorie] wishes to buy the [Florida] lot[s] she may do so by paying half of ninety-five percent of the appraisal value and [William] will undertake to determine what that is." The parties acknowledged their understanding that they had entered into a present agreement that was not dependent on subsequent written memorialization of its terms. The agreement was not to be modifiable by any court in the future.

The December 1985 agreement was not reduced to writing, and there was no report by the master recommending any order by the court. Nor was the action voluntarily dismissed. It simply remained an open action, without the docket reflecting any activity.

It appears from the facts recited by the Court of Special Appeals in its unreported opinion on an appeal in this action, referred to *infra*, that in early 1986 William obtained an appraisal of $60,000 for the Florida property. It also seems that by letter in January 1987 Marjorie offered $17,500 for William's half interest, but that that offer was not acceptable. In August 1987, William listed the property with a realtor at $74,900. Counsel for William in September 1987 advised Marjorie of the listing.[2]

In February 1988, Marjorie moved in this divorce action

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[2] In various papers counsel for William has taken the position that, because Marjorie had not, within a reasonable time, exercised her right to buy his half interest at ninety-five percent of its appraised value, William was free, on behalf of both owners, to offer the property for sale to a third party. That theory's validity has never been adjudicated directly.

for an order enforcing William's promise under the December 1985 agreement to pay to her $1,710 per month out of his retirement. William had not made the payments for November 1987 and succeeding months. Marjorie also alleged that the December 1985 agreement had been obtained by William's fraudulent understatement of assets. In addition, she requested a qualified domestic relations order (quadro) increasing the payment to her from William's retirement to $1,804 per month and a monetary award compensating her for the value of marital property fraudulently undisclosed.

Before any ruling was made on Marjorie's motion, in April 1988, buyers offered $74,900 for the Florida property by submitting a signed contract. William signed it in May. He then sought an order in this action compelling Marjorie to execute documents reasonably required to sell the Florida property or appointing a trustee to sell it.

The motions were heard December 9, 1988, on a record consisting of the court file, a transcript of the December 1985 master's hearing, certain correspondence, the unchallenged factual statements of counsel, and a near hour-long, unsworn statement of facts and of position by Marjorie.

By order docketed December 13, 1988, the court made the following rulings:

1. Marjorie's Motion to Enforce the Agreement was granted "to the extent that the Agreement reached between the parties on December 23, 1985 is hereby incorporated, but not merged, in the original Decree of Absolute Divorce filed in this cause on June 21, 1985";

2. Marjorie's remaining claims for relief were denied;

3. William's summary judgment motion was granted, requiring Marjorie "to perform all acts and to execute all documents

necessary for the sale and settlement" of the Florida property; and

4. In the event Marjorie failed to comply with the order described in 1 3, the circuit court "shall, upon motion of [William], appoint a Trustee, resident in the State of Florida, to act in the place and stead of [Marjorie] with respect to the sale and settlement of said lots... ."

Entry of this order on the docket fully adjudicated all of the claims and constituted final judgment in the action. *See Pappas v. Pappas*, 287 Md. 455, 413 A.2d 549 (1980). No order for appeal was noted. Rather, on January 12, 1989, Marjorie moved for reconsideration, asserting multiple errors.[3] The motion for reconsideration was denied, and that denial was appealed by Marjorie. The Court of Special Appeals dismissed that appeal by order of August 10, 1989, for failure to file a brief.

Meanwhile, in the circuit court, William by motion filed April 19, 1989, sought the appointment of a trustee to sell the Florida property. Marjorie opposed. By order filed July 31, 1989, the Circuit Court for Montgomery County appointed a Florida attorney as its trustee of "to perform all acts and to execute all documents, in the place and stead of (Marjorie], necessary to carry out the sale and settlement" of the Florida lots.

Marjorie appealed this order. The Court of Special Appeals affirmed by an unreported opinion, filed June 13, 1990. That court held that Marjorie "did not perform as ordered" by the December 1988 order.

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[3] Contained in the record extract are copies of letters from Marjorie's attorney to William's attorney, written after judgment and prior to the motion, by which Marjorie offered to buy William's half interest at ninety-five percent of its appraised value and enclosing two separate appraisals, one of December 23, 1988, and the other as of January 6, 1989, each valuing the Florida property at $78,000. These negotiations never came to fruition.

Paragraph four of that order had anticipated the appointment of a trustee, but the Court of Special Appeals did not reach the merits of paragraph four in Marjorie's earlier, dismissed appeal. The intermediate appellate court, in its June 1990 opinion, concluded that, "regardless of the validity of the [December 1988] order ... the circuit court certainly did not abuse its discretion in thereafter appointing a trustee pursuant to its December order." (Footnote omitted).

Our chronological review now shifts to Florida, where William sued Marjorie in Lee County, the situs of the property. That suit, invoking both comity and the Uniform Enforcement of Foreign Judgments Act, alleged, *inter alia*, that "[b]y virtue of the settlement agreement being placed before the (Maryland] Court, the parties have placed their property into the jurisdiction of the Maryland Court... ." The Lee County court construed the appointment by the Maryland court of a trustee to act for Marjorie as an attempt to partition Florida realty and held that the Maryland judgment was not entitled to full faith and credit. In February 1991, the Florida court dismissed William's action. Two months later the prospective purchasers of the Florida lots, who some three years earlier had tendered a signed contract, withdrew their offer, requested a refund of the deposit, and apparently received that refund.

There were some further negotiations between the parties in August 1992. Marjorie offered $28,500 for William's half interest, on the theory that the valuation date, under their agreement, should be as of 1986 when the property was worth $60,000. William rejected, opining that the present value was approximately $100,000.

In September 1992, William petitioned the Circuit Court for Montgomery County to find Marjorie in contempt of the December 1988 and July 1989 orders. That petition proposed

that, until Marjorie executed a power of attorney to William under which he could sell the Florida lots, Marjorie be directed to pay into the registry of the court the monthly payments which Marjorie was receiving directly, under a quadro, from William's retirement.

At a hearing on October 26, 1992, the circuit court rejected William's proposal that Marjorie pay over her quadro income, because the court envisioned that hearings would be required every month. Instead, the circuit court directed Marjorie, under threat of contempt, to execute a power of attorney that counsel for William had prepared. The court gave Marjorie until October 30 to reflect and decide.

When she appeared before the court on October 30, Marjorie advised: "I will refuse to sign a power of attorney to my ex-husband hatchetman." The court found Marjorie in contempt, ordered her confined "for a period of at least 120 days as of this juncture," and advised her that she could be released "at any time by simply signing that document."

This appeal followed. Marjorie was released on bail under a writ of habeas corpus. This Court issued the writ of certiorari on its own motion prior to consideration of the matter by the Court of Special Appeals.[4]

I

The court order which Marjorie refused to obey directed that she sign a limited power of attorney. That order, in turn, was but a particularization of the final and unappealed December 1988 judgment directing Marjorie "to perform all acts and to

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[4] Without any order to supplement the record, but without any objection by William, the record extract contains a petition filed by William in the Lee County, Florida court f or the sale in lieu of partition of the parties' lots. The petition recites the contempt finding and sanction by the Maryland court.

execute all documents necessary for the sale and settlement of" the Florida property. Thus, the scope of review on this appeal from the finding of contempt is narrow. Whether the December 1988 order represented a correct application of the law to the facts is not before us.

In *Harford County Educ. Ass'n v. Board of Educ. of Harford County*, 281 Md. 574, 380 A.2d 1041 (1977), school teachers had violated an anti-strike injunction and were fined for criminal contempt. In discussing the scope of review on the teachers, appeal from the contempt order, we said:

> "A party enjoined may not violate the terms of an injunction and then attack the injunction collaterally in a contempt proceeding, civil or criminal. Only a complete lack of jurisdiction in the court to grant the injunction and not merely error in granting it could avail a party."

Id. at 585-86, 380 A. 2d at 1048 (citation omitted) . *See also Save-Mor Drugs Bethesda, Inc. v. Upjohn Co.*, 225 Md. 187, 190-91, 170 A.2d 223, 225 (1961) (same).

Shapiro v. Ryan, 233 Md. 82, 195 A.2d 596 (1963), in contrast, reversed an orphans' court adjudication of contempt because a circuit court had assumed jurisdiction over the case and had thereby deprived the orphans' court of its authority. *Id.* at 8687, 195 A.2d at 599. Nevertheless, were the orphans' court order that was disobeyed "merely erroneous due to a mistaken view of the facts or to a mistaken view of the law," an adjudication of contempt "will ordinarily be upheld." *Id.* at 86, 195 A.2d at 598.

In the instant matter Marjorie questions whether the December 1988 order correctly applied the law. She submits that the agreement reached before the master in December 1985 was silent as to incorporation of its terms into any decree and that, absent mutual authorization, incorporation may not be

accomplished, leaving the court without any basis for enforcing the agreement. These collateral attacks on the December 1988 order are not available, under the authorities cited above. Thus, we intimate no opinion on the merits of these arguments raised by Marjorie. It is within the subject matter jurisdiction of a circuit court to incorporate a separation agreement into a decree. The court does not lose subject matter jurisdiction even if, *arguendo*, that incorporation was accomplished through an error of law.

Marjorie also suggests that the incorporation feature of the December 1988 judgment was erroneous because, as phrased, it incorporated the agreement into the decree of absolute divorce entered June 21, 1985. As we indicated above, the decree of divorce did not resolve all of the claims in the action. The other claims were resolved later by the December 1988 judgment incorporating the separation agreement. The circuit court had jurisdiction, and indeed expressly reserved jurisdiction, to decide the other claims. Assuming, arguendo, that there was an error in phrasing this 1988 decree, the error could have been raised on direct appeal from the judgment, but the assumed error is not a defect of jurisdictional magnitude. It is not available collaterally to attack the December 1988 judgment in this appeal from an adjudication of contempt for refusing to obey that order, as particularized.

The foregoing analysis also answers a theme that runs through Marjorie's arguments, namely, that William breached the agreement to sell her his interest in the Florida property which she was and is willing and able to acquire. That contention was also resolved by the December 1988 judgment.

II

Marjorie's principal argument is that the order directing her to execute the power of attorney authorizing William to act on her behalf in the sale and conveyance of realty in another state is beyond the subject matter jurisdiction of the circuit court. She views the order as attempting directly to affect the title to land in Florida. Relying almost exclusively on *Fall v. Eastin*, 215 U.S. 1, 30 S. Ct. 31, 54 L. Ed. 65 (1909), Marjorie asserts that Florida is not constitutionally obliged to give full faith and credit either to the order directing her to sign the power of attorney or to the December 1988 judgment, because a Maryland court has no power to affect the title to real estate in Florida. William replies that the court has in personam jurisdiction to order Marjorie to sign a power of attorney in Maryland. This done, it would not be the decree of the Maryland court that transfers the title to realty in Florida. That is to be accomplished by the dead to some presently unknown purchaser, signed by William for himself and on behalf of Marjorie, as her agent, appointed by her under coercion.

From the standpoint of the historic power of equity, William is correct. Basically, this case involves the maxim that equity acts on the person. The maxim was applied to a problem analogous to that in the present matter in *Penn v. Lord Baltimore*, 1 Ves.Sen. 444, 27 Eng. Rep. 1132 (1750), a case of great significance to Marylanders. There had been a long-running boundary dispute between the Maryland and Pennsylvania colonies, part of which involved the claim by the sons of William Penn to three counties, presently comprising the State of Delaware. The claim was based upon deeds in 1682 from the then Duke of York, later James II of England, although the land conveyed lay south of the fortieth parallel and within the charter

of the Maryland province. In 1732, Charles, Fifth Lord Baltimore, and the sons of William Penn had entered into an agreement establishing a procedure for resolution of the dispute. The Penns sued in the English Court of Chancery to enforce that agreement. Lord Chancellor Hardwick recognized that the court could not enforce its decree in rem. *Id.* at 454, 27 Eng. Rep. at 1139. That was no objection, however, because the strict primary decree in the court, as a court of equity, was in personam. *Id.* specific performance of the 1732 agreement by the defendant was ordered. *Id.* at 455, 27 Eng. Rep. at 1139. For historical discussions of these events, see E. Green, *The Making of Maryland* 184-99 (1934); J. Gambrill, *Leading Events of Maryland History* 53-56 (1904); M. Andrews, *The Founding of Maryland* 285-300 (1933).[5]

Chief Justice Marshall, writing for the Supreme Court of the United States, addressed this problem and reviewed the old authorities, including *Penn v. Lord Baltimore*, in *Massie v. Watts*, 6 Cranch 148, 3 L. Ed. 181 (1810). An action was brought in the federal court in Kentucky to require the defendant to convey land in Ohio to the plaintiff. The plaintiff's theory for equitable relief was that the defendant had obtained legal title to the Ohio land through a fraudulent survey. The trial court held "that the complainant recover of the defendant one thousand acres of land, to be laid off agreeably to the mode pointed out as the proper manner for surveying... ." *Id.* at 154, 3 L. Ed. at 184. On appeal the Court affirmed upon the general principle that "in a case of fraud, of trust, or of contract, the jurisdiction of a court of chancery is sustainable wherever the person be found, although

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[5] A very comprehensive and scholarly treatment of these events is E.B. Matthews, *History of the Boundary Dispute Between the Baltimores and Penns Resulting in the Original Mason and Dixon Line*, in 7 Md. Geological Survey 103-202 (1908).

lands not within the jurisdiction of that court may be affected by the decree." Id. at 160,, 3 L. Ed. at 186.

In *Binney's Case*, 2 Bland 99, 144-45 (1829), Chancellor Bland discussed the territorial limitations on the powers of the former High Court of Chancery of Maryland, saying:

> "But the jurisdiction of the High Court of Chancery over the matters of which it takes cognizance is co-extensive with the confines of the State itself. ... Wherever a person is to be found within reach of the Court of Chancery, and he may, in any respect, be considered as a trustee, or the matter in dispute arises out of a transitory personal contract[,] not necessarily involving the title to, and following land; and which the party may, by personal coercion, [b]e made to execute specifically, this Court may have jurisdiction and decree accordingly. Therefore, if a defendant be found here he may be decreed to pay money, or to account for the rents and prof its of lands lying in another, or a foreign country, which he had held and enjoyed; or if a deed of lands in a foreign country be found to be fraudulent, it may be ordered to be delivered up and cancelled; or *in specific performance of a contract for land in another State, such a conveyance may be ordered as shall be sufficient according to the law of the State where it lies.* But the Court will not decree a partition of such land, or in any manner directly decide upon the title to it, or upon the validity of a deed or will as a material part of the title; nor found the relief granted upon the strict title to such property itself."

(Emphasis added).

White v. White, 7 G. & J. 208 (1835), is a holding of this Court, on appeal from the Court of Chancery, that presents an instructive contrast. Sale in lieu of partition was sought of real estate, in both Maryland and Pennsylvania, that had devolved

upon the heirs of a decadent. The Pennsylvania law of descent was the same as that in Maryland. The Chancellor entered the decree as to Maryland real estate but dismissed the bill for want of jurisdiction over the Pennsylvania land. *Id.* at 210. This Court affirmed. As to the Pennsylvania land the bill sought a "decree *in rem* where the thing against which the decree goes, and is alone the subject of, and to be operated upon by it, is beyond the territorial jurisdiction of the Chancery Court, and not subject to its authority...." *Id.* This was to be contrasted with a case

> "where the decree sought is *in personam*,, and may be carried into effect by process of contempt [in which] the court of Chancery here may have jurisdiction, although it may affect land lying in another State, the defendant being in the State of Maryland, as in a case of trust, or fraud, or of contract. ... In such a case, the decree does not act directly upon the land, but upon the defendant here, and within the jurisdiction of the Court."

Id. at 211.

This Court affirmed a decree compelling the execution of a deed to land situated outside of Maryland in *Stansbury v. Fringer*, 11 G. & J. 149 (1840). The land lay in Ohio, but the equity side of the Frederick County Court had jurisdiction over the person of the defendant. Specific performance was granted, and it was ordered that the defendant "shall execute and acknowledge in due form of law, a deed in fee simple, conveying the said land," which was then described. *Id.* at 151. The jurisdiction of the trial court was not questioned on appeal, and the opinion deals only with a mutuality of contract issue.

Fall v. Eastin, on which Marjorie relies, was decided in 1909. In a divorce action in the State of Washington, the court ordered that certain realty in Nebraska be set aside as the separate property of the wife, and the Washington court ordered the

husband to convey that property to her. Instead, the husband conveyed the property to a third party. The Washington court appointed a commissioner who executed a deed to the wife that was recorded in Nebraska. The wife then brought an action in Nebraska to invalidate the conveyance by the husband to the third party. The Supreme Court of Nebraska, on rehearing, reversed a grant of that relief, *Fall v. Fall*, 75 Neb. 120, 113 N.W. 175 (1907). The Supreme Court of the United States affirmed. The following passage from the majority opinion is relevant to Marjorie's argument.

> "[W]e think that the doctrine that the court, not having jurisdiction of the *res*, cannot affect it by its decree, nor by a deed made by a master in accordance with the decree, is firmly established. ... [W]hen the subject matter of a suit in a court of equity is within another state or country, but the parties within the jurisdiction of the court, the suit may be maintained and remedies granted which may directly affect and operate upon the person of the defendant, and not upon the subject-matter, although the subject-matter is referred to in the decree, and the defendant is ordered to do or refrain from certain acts toward it, and it is thus ultimately but indirectly affected by the relief granted. In such case, the decree is not of itself legal title, nor does it transfer the legal title. It must be executed by the party, and obedience is compelled by proceedings in the nature of contempt, attachment, or sequestration. On the other hand, where the suit is strictly local, the subject-matter is specific property, and the relief, when granted, is such that it *must* act directly upon the subject-matter, and not upon the person of the defendant, the jurisdiction must be exercised in the state where the subject-matter is situated."

215 U.S. at 11-12, 30 S. Ct. at 7-8, 54 L. Ed. at 70-71.

The reasoning in *Fall v. Eastin* does not support Marjorie's position that the Circuit Court for Montgomery County had no subject matter jurisdiction to direct her to sign the power of attorney in Maryland, even if it would indirectly affect property in Florida. *Fall v. Eastin* was not concerned with whether the Washington court could sanction the husband for contempt in failing to obey its decree ordering a conveyance to the wife. Indeed, *Fall v. Eastin* recognizes that obedience may be "compelled by proceedings in the nature of contempt, attachment or sequestration" to a decree directing transfer of legal title to foreign land through an instrument executed by a party who is personally before the court. *Id.* at 11, 30 S. Ct. at 8, 54 L. Ed. at 70.

These principles were restated by this court in *Donigan v. Donigan*, 208 Md. 511, 119 A.2d 430 (1956). *Fall v. Eastin*, among numerous other authorities, was cited for the general proposition that

> "by virtue of its power over a person properly before it, a court of equity may compel him to act in relation to property not within the jurisdiction, as it could in relation to property within the jurisdiction, but that its decrees do not operate directly on the property nor affect the title, but are only made effectual by directing some action on his part, such as the execution of conveyances or the execution or cancellation of other instruments or writings."

Id. at 522, 119 A-2d at 434.

Nor does the judicial coercion invalidate the conveyance. *Gilliland v. Inabnit*, 92 Iowa 46, 60 N.W. 211 (1894), is on point. Before his death, a Kentucky resident was ordered by a Kentucky court, as a remedy for a breach of trust, to convey Iowa real property. When the defendant refused, he served several days in prison for contempt, and then executed and

delivered the deed. *Id.* at 211. Rejecting a contention that the deed was "'null and void, for the reason that the grantor ... was forced and compelled by duress and against his will ... to execute and deliver said conveyance,'" *id.*, the Iowa court stated:

> "It is true that the title to land is to be affected by the decree, in so far as it compels the party to convey, but, as said, by reason of his trust or contract duty he is personally obliged to convey, and that duty may be discharged in one state as well as another, although the land may not be situated in such state."

Id. at 212-13.

See also Restatement (Second) of Conflict of Laws §102 comment d (1971) ("[U]nder ordinary circumstances the Y courts would give effect to a deed executed by the defendant pursuant to the order of the X court and in order to avoid punishment by that court."); E. Messner, *The Jurisdiction of a Court of Equity over Persons to Compel the Doing of Acts Outside the Territorial Limits of the State*, 14 Minn. L. Rev. 494, 508 (1930); W. Barbour, *The Extra-Territorial Effect of the Equitable Decree*, 17 Mich. L. Rev. 527, 549 (1919) ("In fact it is believed that no decision will be found in which a deed, made under the compulsion of a foreign decree, was for that reason held invalid by a court of the situs of the land."); 4 American Law of Property §18.65(h) & (i), at 788-90 (1952).

From the standpoint of the power of the equity court, there is no difference between compelling, by contempt, the signing of a deed, and compelling, by contempt, the signing of a power of attorney to sign a deed. The Circuit Court for Montgomery County had jurisdiction over the subject matter.

III

Marjorie urges this Court to hold that the circuit court abused its discretion by sanctioning her for contempt because in

her view, the Florida court will not honor a conveyance signed in her name pursuant to a coerced power of attorney. In support of that contention she refers to the decision by the Lee County, Florida trial court. But Marjorie's contention, as we noted above, is contrary to *Fall v. Eastin*, which gives full faith and credit recognition to in personam decrees.[6]

Marjorie also contends that William's proper remedy was to bring an action for sale in lieu of partition in Florida, where the Florida court could then adjudicate whether Marjorie has a right to acquire William Is interest. William, however, based upon the final judgment of December 1988, based upon the order of July 31, 1989, affirmed by the Court of Special Appeals, and based upon the order of October 26, 1992, directing the signing of the power of attorney, had a right to pursue an in personam remedy in Maryland. When Marjorie, after opportunity for reflection, chose deliberately to defy the order of October 26, 1992, the circuit court did not abuse its discretion by confining Marjorie while giving her the key to her release.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.

ELDRIDGE, J., concurs in the result only.

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[6] *Fall v. Eastin* has not escaped adverse criticism by legal scholars. See, e.g., B. Currie, *Full Faith and Credit to Foreign Land Decrees*, 21 U. Chi. L. Rev. 620 (1959), espousing the thesis that full faith and credit should be given by the state of the situs of the land to a foreign decree, insofar as it determines the rights, *inter se*, of the parties, even if the foreign decree appoints a trustee to convey and thus classically would be considered to be a decree *in rem*.

COURT OF APPEALS
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March 4, 1994

Darrel L. Longest, Esq.
13230 Executive Park Terrace
Germantown, MD 20784

Re: Marjorie H. Eckard vs. William E. Eckhard
No. 49, September Term, 1993

Dear Mr. Longest:

Please be advised the motion for reconsideration filed in the above entitled case was denied by the Court on March 4, 1994. A copy of the mandate is enclosed herewith.

Very truly yours,
/s/
Alexander L. Cummings
Clerk

ALC/fmw
Enclosure
cc: Joseph D'Erasmo, Esq.

(2)

Supreme Court, U.S.
FILED
JUL 28 1994
OFFICE OF THE CLERK

No. 93-1973

In The

Supreme Court of the United States

October Term, 1994

MARJORIE H. ECKARD,

Petitioner,

v.

WILLIAM E. ECKARD,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Maryland

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESTATEMENT OF QUESTIONS PRESENTED

1. Does the decision of the state court in *Eckard v. Eckard*, 333 Md. 531, 636 A.2d 455 (1994), rest on an adequate and independent state ground or does it involve the resolution of any federal question, or the application of federal law, so as to warrant the exercise by this Court of its jurisdiction by writ of certiorari?

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No. 93-1973

In The

Supreme Court of the United States

October Term, 1994

MARJORIE H. ECKARD,

Petitioner,

v.

WILLIAM E. ECKARD,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Maryland

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, William E. Eckard, hereby opposes the Petition for Writ of Certiorari to review the judgment of the Court of Appeals of Maryland in the case of *Eckard v. Eckard*, 333 Md. 531, 636 A.2d 455 (1994).

STATEMENT OF THE CASE

The Respondent accepts the Petitioner's description of the course of proceedings in the Maryland courts, contained in the Petitioner's Statement of the Case.

REASONS FOR DENYING THE WRIT

The Decision of the Court of Appeals of Maryland in the Case of *Eckard v. Eckard*, 333 Md. 531, 636 A.2d 455 (1994) which Petitioner Seeks to Review Herein by Certiorari, Rests on an Adequate and Independent State Ground, Decided No Question of Federal Law, Constitutional or Statutory, nor Has it Decided a Federal Question Conflicting with the Decisions of this Court; *Ergo*, Jurisdiction to Review it is Lacking.

28 U.S.C., § 1257, provides in pertinent part that final judgments or decrees rendered by the highest court of a state may be reviewed by this Court:

(a) where the validity of a treaty or statute of the United States is drawn in question, or

(b) where the validity of a statute of any state is drawn into question on the grounds of its being repugnant to the Constitution, treaties, or laws of the United States, or

(c) where any right, title, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of the United States.

Rule 10 of the Rules of this Court states that the "character of reasons" which argue for consideration of a state court's decision include instances in which a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort, or a United States Court of Appeals, or when a state court has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

The state court decision sought to be reviewed here by certiorari meets none of the criteria established in 28 U.S.C., § 1257, or in Rule 10 of the Rules of this Court, notwithstanding the passing references to the full faith and credit clause of the United States Constitution, Art. IV, Section 1, in the Court of Appeals' decision. (See App. p. 58a). In fact, the Petitioner effectively argues here the *opposite* of the position she presented in both the Circuit Court for Lee County, Florida, and in the Court of Appeals of Maryland. To illustrate this last point, it is helpful to review the Court of Appeals' articulation of the parties' positions. The Court summarized those positions as follows (App. 54a):

> This appeal is from a civil contempt order issued in a divorce action that began in December 1983. The Circuit Court for Montgomery County ordered the appellant, Marjorie H. Eckard (Marjorie), to sign a power of attorney authorizing her former husband, William E. Eckard (William), to execute in Marjorie's name and on her behalf the documents necessary for the sale and conveyance of two adjacent, unimproved lots in the City of Cape Coral, Florida. When Marjorie refused to do so she was imprisoned for contempt until released, pending the outcome of this appeal, on a writ of habeas corpus. Marjorie's principal contention is that the Maryland court had no jurisdiction to enter an order affecting the title to realty lying outside of Maryland. As we shall see below, for more than 200 years, courts of equity have issued, enforceable by contempt, the type of order presented here.

The Court further clarified Marjorie's and William's stance before them (App. 62a):

> Marjorie's principal argument is that the order directing her to execute the power of attorney authorizing William to act on her behalf in the sale and conveyance of realty in another state is beyond the subject matter jurisdiction of the circuit court. She views the order as attempting directly to affect the title to land in Florida. Relying almost exclusively on *Fall v. Eastin*, 215 U.S. 1, 30 S.Ct. 31, 54 L.Ed. 65 (1909), Marjorie asserts that Florida is not constitutionally obliged to give full faith and credit either to the order directing her to sign the power of attorney or to the December 1988 judgment, because a Maryland court has no power to affect the title to real estate in Florida. William replies that the court has in personam jurisdiction to order Marjorie to sign a power of attorney in Maryland. This done, it would not be the decree of the Maryland court that transfers the title to realty in Florida. That is to be accomplished by the deed to some presently unknown purchaser, signed by William for himself and on behalf of Marjorie, as her agent, appointed by her under coercion.
>
> From the standpoint of the historic power of equity, William is correct. Basically, this case involves the maxim that equity acts on the person. . . .

In short, the Petitioner argued in the Circuit Court for Montgomery County, Maryland and in the Maryland Court of Appeals that the Maryland court *did not* have jurisdiction to enter an Order requiring her to execute a Limited Power of Attorney authorizing the Respondent

to act for her as a means of carrying out the prior agreement of the parties and its Decree, or to hold her in contempt for her contumacious refusal to do so. Yet, in this Court the Petitioner now asserts that Florida should have given full faith and credit to the original Decree of the Maryland Court so that she would not have been induced to disobey the Montgomery County Circuit Court's Orders. The Petitioner attempts to explain this apparent contradiction at footnote 5, contained on page 14 of the Petition. But, Respondent respectfully submits that the rationale there advanced simply fails to accord with the reality disclosed by the contents of the Appendix to the Petition, including the Court of Appeals' decision.

However, even assuming consistency in the Petitioner's posture before the state courts and before this Court, it is beyond serious dispute that no federal question or issue of federal law was decided by the Maryland Court of Appeals.

By simply examining the decision of the Court of Appeals of Maryland in *Eckard v. Eckard, supra,* it is obvious that no federal treaty or statute is even mentioned. No conflict of state court decisions on a federal question or federal treaty or statute is described, analyzed, or resolved.

The Court of Appeals simply concluded that Marjorie was, in fact, and as a matter of state law, in contempt of the Order issued by the Circuit Court for Montgomery County, Maryland, requiring her to sign a Limited Power of Attorney to enable her ex-husband to proceed with the agreement reached between them in 1985.

Even the most determined legal analysis and exegesis of that opinion would fail to demonstrate that the Court of Appeals concluded either (a) that the full faith and credit clause applied to these circumstances and constituted the basis for the Court's decision holding Marjorie in contempt, or (b) that the full faith and credit clause did not apply to these circumstances, and for that reason Marjorie could be held in contempt. Instead, the Court cited *Fall v. Eastin*, 215 U.S. 1 (1909); *Massie v. Watts*, 6 Cranch 148, 3 L.Ed. 181 (1810); and *Penn v. Lord Baltimore*, 1 Res. Sen. 444, 27 Eng. Rep. 1132 (1750), in support of its fundamental conclusion: ". . . for more than 200 years, courts of equity have issued, enforceable by contempt, the type of order presented here."

The root of support for this conclusion is the case law over two centuries of history articulating the authority of courts of equity and the methods by which that authority might be enforced, not the full faith and credit clause of the United States Constitution. No explicit provision of a federal or state statute or constitution (other than those establishing the judicial system *ab initio*, and in general) was cited as the source of this holding. Maryland is not a civil law state, and neither the Constitution nor a federal statute was cited in the Opinion of the Maryland Court of Appeals as the cornerstone of its decision. The basis of that decision is stated at 333 Md. 531, 544, 636 A.2d 455, at 462 (App. 67a):

> The reasoning in *Fall v. Eastin* does not support Marjorie's position that the Circuit Court for Montgomery County had no subject matter jurisdiction to direct her to sign the power of attorney in Maryland, even if it would indirectly

affect property in Florida. *Fall v. Eastin* was not concerned with whether the Washington court could sanction the husband for contempt in failing to obey its decree ordering a conveyance to the wife. Indeed, *Fall v. Eastin* recognizes that obedience may be "compelled by proceedings in the nature of contempt, attachment or sequestration" to a decree directing transfer of legal title to foreign land through an instrument executed by a party who is personally before the court. *Id*, at 11, 30 S.Ct. at 8, 54 L.Ed. at 70.

These principles were restated by this court in *Donigan v. Donigan*, 208 Md. 511, 119 A.2d 430 (1956). *Fall v. Eastin*, among numerous other authorities, was cited for the general proposition that

> "by virtue of its power over a person properly before it, a court of equity may compel him to act in relation to property not within the jurisdiction, as it could in relation to property within the jurisdiction, but that this decrees do not operate directly on the property nor affect the title, but are only made effectual by directing some action on his part, such as the execution of conveyances or the execution or cancellation of other instruments or writings."

Id, at 522, 119 A.2d at 434.

This holding is wholly a matter of general state law and is entirely adequate to support the Court's judgment affirming the Order of Contempt. As a result, this Court's jurisdiction to review that decision is lacking. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935).

This Court has held in numerous cases that it has no jurisdiction to review state court decisions based on non-federal grounds. *New Orleans v. New Orleans Water Works Co.*, 142 U.S. 79 (1891); *Adams v. Russell*, 229 U.S. 353 (1913); *Kenny v. Craven*, 215 U.S. 125 (1909); *Harris v. Reed*, 109 S.Ct. 1038, 103 L. Ed. 2d 308 (1989).

For jurisdictional purposes, it is not enough even if the record shows that a federal question was argued or presented to the state court for decision. It must appear that the decision of a federal question was necessary to a determination of the cause and that it was actually decided, or that the judgment, as rendered, could not have been given without deciding it. *Brown v. Atwell*, 92 U.S. 327 (1876); *First Nat. Bank v. Estherville*, 215 U.S. 341 (1910).

The Respondent does not wish to belabor the obvious here. However enlightening and useful it might be to revisit *Fall v. Eastin, supra*, as the Petitioner suggests, this case presents no justiciable dispute cognizable within the context of the boundaries of this Court's jurisdiction.

CONCLUSION

For the reasons asserted above, Respondent respectfully urges that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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